APPELLATE CIVIL.

Before the Hon'ble Mr. A. H. L. Leach, Chief Justice, and Mr. Justice Varadachariar.

1937, August 4.

ANANTHACHARI AND TWO OTHERS (PLAINTIFFS), APPELLANTS,

v.

KRISHNASWAMI *alias* VENKATAKRISHNA BHATTACHARIAR (SECOND DEFENDANT), RESPONDENT.*

Hindu law—Partition deed—Joint family composed of an adopted son and a natural-born son and his son—Adopted son acted as manager—Existence of ancestral property—Insufficiency of ancestral property for meeting family necessity and for paying off family debts—Adopted son by his exertions discharging family debts and buying new properties—Partition between adopted son on the one hand and the natural-born son and his son on the other—Adopted son given one half of the joint family properties instead of one-fifth in view of his services to the family—Validity of.

S (adopted son of M), G (posthumous son of M), A (G's minor son) and M.V (G's wife) formed members of a joint Hindu family. By a registered deed of partition the family estate was divided equally between S and G (representing his branch) notwithstanding that S being an adopted son was only entitled in law to a one-fifth share. No question with regard to the validity of the transaction was raised during G's lifetime. Two more sons were born to G after partition. After G's death, M.V., as next friend of her minor sons, filed a suit to recover from S the difference between the share he received and the one-fifth share allowed by law.

It was found: (i) At the time of M's death the joint family income was not sufficient to provide for the maintenance of the joint family, the upkeep of the family property and the discharge of the family debts; (ii) At all material times S had independent sources of income out of which the family debts were all paid

* Original Side Appeal No. 21 of 1936.

off, improvements were made to the ancestral house, a second house was built and three small plots of land were purchased, and the recitals in the deed of partition, that most of the joint family properties were acquired and improved by S alone, were substantially proved ; (iii) The case raised in the arguments on behalf of G's sons, that S must be deemed to have blended his self-acquisitions with the joint family property so as to impress the whole of the properties covered by the deed of partition with the character of joint family properties, was not distinctly raised in the pleadings and there was nothing in the evidence to support the same so far as the house in the village was concerned.

Held: Under the circumstances the deed of partition should be upheld.

Per THE CHIEF JUSTICE.—As S had rendered services of real value to G, the deed of partition could be supported. G had by the said deed in effect conveyed his share in the family property to S in consequence of these services and as A had received his individual share (two-fifths) in the family estate in full, the Court exercising jurisdiction in equity should not allow A to repudiate the transaction. The other sons of G were not born at the time and standing alone had no right to challenge the transaction.

Natesa Iyer v. *Rathai Ammal*(1) followed. *Venkata Row* v. *Tuljaram Row* (2) distinguished.

Per VARADACHARIAR J.—(i) When a minor coparcener in a joint family (or a reversioner) is sought to be bound by transactions entered into by an undivided father (or a widow) as a family settlement, it is not enough merely to prove that it was intended to secure peace and harmony in the family or the preservation of its property and that it was not tainted by fraud or similar vitiating circumstances; but it should also be a *bona fide* compromise of a disputed claim. The partition as such could not be upheld as a family arrangement. (ii) Though it is difficult to read into the partition deed an intention on the part of G to relinquish or transfer his share as such, the law can split the transaction and on grounds of equity hold that S is entitled to stand in the shoes of G and claim the share which G could have got if a partition between G and his

(1) (1908) 19 M.L.J. 62. (2) (1921) I.L.R. 45 Mad. 298 (P.C.).

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son had taken place at the date when partition took place between S and G. The transfer having been completed by the deed of partition, S would be entitled to the benefit of that equitable principle.

Ramkishore Kedarnath v. *Jainarayan Ramrachhpal*(1) followed.

APPEAL from the judgment of LAKSHMANA RAO J. dated 12th February 1936 and passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Civil Suit No. 296 of 1931.

K. Rajah Ayyar and *K. E. Rajagopalachari* for appellants.—Exhibit I is the deed of partition in question. On the date of the partition the joint family was composed of an adopted son, whose legal representative is the respondent herein, and a natural-born son and his son (the first appellant) who was then a minor. The joint family had large properties. It was a partition of the two branches. In law the adopted son would be entitled to a one-fifth share and the first appellant and his father to a four-fifths share. Contrary to law the deed purported to give one half to the adopted son and the other half to the first appellant and his father. The first appellant was a minor. The considerations mentioned in Exhibit I do not in law warrant a half share being given to the adopted son. He was the manager of the joint family. His position as such enabled him to get a large income. He threw that income into the hotchpot. Everything had become blended and became joint family property. The whole of the income of the joint family was utilized by him for meeting the family expenses and for paying off the family debts. The first appellant was a minor on the date of the partition. Under those circumstances the giving of a half share to the adopted son is contrary to the decisions in the following cases: *Ganesh Row* v. *Tulja Ram Row*(2), *Venkata Row* v. *Tuljaram Row*(3) and *Venkata Row* v. *Tuljaram Row*(4). The deed of partition could not be supported as a family settlement because no claim was made by the adopted son for a half share and there was no dispute; see *Ramkishore Kedarnath* v. *Jainarayan*

(1) (1913) I.L.R. 40 Cal. 966 (P.C.). (2) (1913) 26 M.L.J. 460.
(3) 1917 M.W.N. 30. (4) (1921) I.L.R. 45 Mad. 298 (P.C.).

Ramrachhpal(1). The deed could not be construed as a relinquishment in favour of the adopted son by the appellant's father of three-tenths out of his two-fifths share in order to make the adopted son's legitimate share, namely, one-fifth, into a half share; see *Venkata Row* v. *Tuljaram Row*(2) and *Veeranna* v. *Seetanna*(3).

K. S. Krishnaswami Ayyangar and *C. Narasimhachari* for respondent.—There is no doubt that the adopted son earned a large income on his own initiative without the help of the family property. Out of that income he paid off a large portion of the family debts. He purchased large properties out of that income. In the partition the natural-born son represented his branch. In view of the services rendered by the adopted son he was given a half share in the partition. The deed of partition could be supported as a family arrangement; see *Ramdas* v. *Chabildas*(4), *Anantanarayana Iyer* v. *Savithri Ammal*(5) and *Yechuri Ramamurthi* v. *Yechuri Ramamma*(6). Moreover it is open to a coparcener to relinquish his share or a portion of the same to another coparcener even without any consideration; see *Peddayya* v. *Ramalingam*(7) and *Thangavelu Pillai* v. *Doraisami Pillai*(8). Exhibit I could be construed as a partition arrangement and a relinquishment by one coparcener of a portion of his share in favour of another coparcener. After the partition the adopted son began to enjoy his half share and the natural-born son and his son (first appellant) began to enjoy the other half. The transfer had become completed. As such the equitable principle underlying *Ramkishore Kedarnath* v. *Jainarayan Ramrachhpal*(1), *Veeranna* v. *Seetanna*(3) and *Natesa Iyer* v. *Rathai Ammal*(9) could be invoked for upholding the equal division.

K. Rajah Ayyar replied.

Cur. adv. vult.

JUDGMENT.

LEACH C.J.

LEACH C.J.—The appellants are the sons of one Gopala Bhattachariar who died in the year 1931.

(1) (1913) I.L.R. 40 Cal. 966 (P.C.). (2) (1921) I.L.R. 45 Mad. 298 (P.C.).
(3) (1929) 59 M.L.J. 139. (4) (1910) 12 Bom. L.R. 621.
(5) (1911) I.L.R. 36 Mad. 151. (6) (1915) 30 M.L.J. 308.
(7) (1888) I.L.R. 11 Mad. 406. (8) (1914) 27 M.L.J. 272.
(9) (1908) 19 M.L.J. 62.

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Gopala, who was the son of one Manavala Ayyangar, was born after his father's death which took place in 1888. Three years before he died Manavala adopted Srinivasa Bhattachariar, the first defendant in the suit out of which this appeal arises. Srinivasa died during the pendency of the suit and he is now represented by the respondent. Srinivasa and Gopala remained joint until 1923 when a partition of the family estate was effected. At this time Gopala had one son, the first appellant, then a boy of five years of age. By the deed of partition which was dated 30th March 1923 the family estate was divided equally between Srinivasa and Gopala, notwithstanding that Srinivasa being an adopted son was only entitled in law to a one-fifth share. No question with regard to the validity of the transaction was raised during Gopala's lifetime, but in the month after his death the suit was launched by the widow as the next friend of the appellants who were then all minors. The first appellant has since come of age. The appellants contend that they are entitled to recover from the estate of Srinivasa the difference between the share he received and the one-fifth share allowed by law. The suit was tried by LAKSHMANA RAO J. who decided that in the circumstances of the case Gopala was justified in giving a moiety of the estate to Srinivasa on partition.

At the time of Manavala's death the estate consisted of about eighty acres of land. He was financially involved and it was necessary to sell a portion of the land to relieve pressure by a creditor. In a good year the income from the lands did not amount to more than Rs. 1,300 and the

only other source of income which the family had was a half share in the *chinna murai* of the Sri Parthasarathi Swami temple, Madras. The income from this half share of the *chinna murai* did not amount to more than Rs. 40 per mensem and in all probability to much less ; but whatever the exact figure was it is clear that the joint income was not sufficient to provide for the maintenance of the family, the upkeep of the family properties and the discharge of the family debts.

On 3rd March 1903 the owners of the *peria murai* gave Srinivasa a power of attorney authorising him to supervise the collections in the temple to which they were entitled with power to appoint others to assist him in his work. For these services he was to be paid Rs. 10 per mensem. Srinivasa himself took an active part in collecting monetary offerings from worshippers and it is common ground that he was entitled to retain a percentage of the amounts actually collected by him. His earnings in this respect are said to have amounted to about Rs. 40 per mensem, in addition to the Rs. 10 mentioned in the power of attorney. But it is a legitimate inference from the proved facts in this case that his personal income was not limited to this Rs. 50 per mensem and he must have received much more by way of gifts from wealthy people interested in the temple. Srinivasa held this power of attorney for twenty years and it is very significant that twelve months after he obtained it borrowings on behalf of the family ceased. The significance does not stop there. During the period for which Srinivasa held this power of attorney the family debts were all paid off,

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improvements were made to the ancestral house, a second house was built and three small plots of land were purchased. This could only have been done out of monies which Srinivasa acquired as the result of the position which he held as the agent of the owners of the *peria murai*, and this is, in effect, acknowledged in the deed of partition itself. It cannot be gainsaid that the family income alone was insufficient to do all this and Gopala who was a minor up to 1906 had no separate income of his own, apart from what he earned as a gumastah under Srinivasa, which could not have amounted to much. The position, therefore, was that Gopala had to thank Srinivasa for removing the oppression of debt and reviving the prosperity of the family. In these circumstances it is not surprising, when it was decided to put an end to the joint family status and partition the family estate, that Gopala agreed to Srinivasa having a half share instead of one-fifth. The recitals in the deed of partition show that Gopala realised how much he owed to Srinivasa. These recitals read as follows :—

"Whereas both of us were living hitherto in one joint family, and whereas, in view of certain inconveniences, it is now deemed fit to effect a partition and live separately, and whereas the movable and immovable properties belonging to us in common and mentioned hereunder belonging to us both as our ancestral property and self-acquired property, which are in our possession and enjoyment, are most of them acquired and improved to a great extent by Srinivasa Ayyangar alone the adopted son amongst us, under the patronage of great men, . . ."

The reference to the patronage of great men has been interpreted as meaning that as the result of coming into contact with wealthy

worshippers Srinivasa received substantial gratuities, and no alternative interpretation has been suggested.

The learned trial Judge had no reason to doubt the truth of the recitals and on the basis that Srinivasa had discharged the family debts held the partition deed to be valid. The learned Advocate for the appellants challenges the correctness of this decision. He says that, because Srinivasa threw into the common fund his own individual income, thereby providing monies for the discharge of the family debts and the improvement of the estate, he could have no claim in law to a greater share than one-fifth on partition. He had blended his own monies with those of the family. There is certainly no evidence to show when the debts were paid off and there is no evidence that Srinivasa ever made a claim to be repaid any monies spent by him for the benefit of the family, or any evidence that he had ever made any stipulation for repayment. Therefore, if the case rested here there would be much to be said for the argument of the learned Advocate for the appellants. The defendants in their written statement supported the partition deed on the ground that Srinivasa had done much for Gopala, and that therefore Gopala was entitled to do what he did. Before us it was also supported on the ground that it was in the nature of a family arrangement, but unfortunately for this argument there is no evidence that it was entered into in order to settle a family dispute or to avoid the expense or delay of litigation, or that there was, in fact, any real necessity for giving Srinivasa a larger share. But as it is true that Srinivasa had

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rendered services of real value to Gopala I think that the deed can be supported. Gopala had by a registered deed in effect conveyed his share in the family property to Srinivasa in consequence of these services and as the first appellant has received his individual share in the family estate in full he cannot be allowed to repudiate the transaction. The other appellants were not born at the time and standing alone have no right to challenge the transaction.

Here it will be convenient to examine some of the authorities which have been quoted to us in the course of the arguments. The first of these is that of *Shivajirao* v. *Vasantrao*(1). A perusal of the report in that case shows that their Lordships of the Privy Council had at an earlier stage dealt with the validity of a deed whereby a son in consideration of a monetary payment by the father relinquished his own share in the ancestral property, and that at a later stage the Bombay High Court held that this operated to prevent a son born subsequently from having any claim to share in the property. There was here, however, no express transfer by the son to the father and the facts differ to that extent. I will now turn to the series of connected decisions to be found in the reports of *Ganesh Row* v. *Tulja Ram Row*(2), *Venkata Row* v. *Tuljaram Row*(3) and *Venkata Row* v. *Tuljaram Row*(4). One Venkata Row who died in 1871 had four sons, Ramachandra Row, Luchmana Row, Rajaram Row and Tuljaram Row. After the dissolution of the family in 1881 a large

(1) (1908) I.L.R. 33 Bom. 267.
(2) (1913) 26 M.L.J. 460.
(3) 1917 M.W.N. 30.
(4) (1921) I.L.R. 45 Mad. 298 (P.C.).

part of the family property remained in the hands of Tuljaram Row. In 1886, Atmaram, the son of Luchmana, brought a suit for the purpose of ascertaining what the assets in the hands of Tuljaram Row were and for the recovery of his share. In the course of this case it was held that Tuljaram Row was liable to Rajaram Row and his branch of the family in certain sums of money. Rajaram on behalf of his branch agreed to release Tuljaram from payment of these monies in consideration of Tuljaram agreeing not to appeal. In other words, Rajaram gave up his own and his son's rights without any struggle. On the son attaining majority he filed a suit to enforce his rights. This suit failed both in the trial Court and in this Court on appeal, but the case was carried to the Privy Council, where it was held that the compromise not having received the sanction of the Court was not binding on Rajaram's son who was a minor at the time. The agreement did not purport to be a release of individual rights nor to effect any division of the joint family property ; it only purported to release the debts owing to Rajaram's branch of the family in consideration of Tuljaram refraining from appealing. The case was then sent back for retrial on the other issues. On the remand this Court decided that the compromise was binding to the extent of the father's share. Another appeal followed to the Privy Council which held that the agreement entered into by Rajaram Row did not purport to be a release of individual rights or shares in the fund at all, and it did not purport to effect any division of the joint family estate then existing between Rajaram Row and

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his son in the subject-matter of the decrees. Their Lordships accordingly held that Rajaram Row's attempt to alienate, or to release from the estate, substantial portions of the joint family property failed, and that there was no efficacy given to the arrangement that was then contemplated. But the case before us goes further than this. Gopala did in fact execute in favour of Srinivasa a transfer of half the property and put him into possession of it.

In *Veeranna* v. *Seetanna*(1) it was pointed out that the compromise there did not purport to alienate the father's share alone but the whole of the family interest in the property and therefore was not binding on the family. It was recognised, however, that when such an alienation has been effected, the Court will enforce an equity in favour of the alienee to the extent of the alienor's share, though it does not follow that the Court will enforce such a compromise before the equity has in fact arisen. In *Natesa Iyer* v. *Rathai Ammal*(2) it was held that a gift by a member of a joint Hindu family made in consideration of past services voluntarily rendered to the family would not bind any of the members of the family other than the donor, without proof that they were for family necessity or for family benefit ; but it would be binding on the donor himself as one made for consideration received. In that case it was pressed upon the Court that past services voluntarily rendered would not amount to consideration to support a promise, but the Court held that it did not follow that the

(1) (1929) 59 M.L.J. 139. (2)|(1908) 19 M.L.J. 62.

services were not of value when set against an alienation. The services rendered were in fact capable of valuation and the defendant had valued them and paid for them by the transfer. This is exactly the case here. It seems to me that in the circumstances of this case the Court, exercising as it does jurisdiction in equity, is entitled to say that the first appellant shall not be allowed to tear up the transfer deed so far as it affects his father's share.

For these reasons I think the decree passed by the learned trial Judge was a correct one. The appeal will accordingly be dismissed with costs.

VARADACHARIAR J.—I agree and shall only add a few observations on the points of law argued before us.

The conclusion of the learned trial Judge that the facts which he found proved "would unquestionably justify the equal division" between the two brothers seems to me, with all respect, open to criticism. On behalf of the appellants, it was contended, with some justification, that, when under the law Srinivasa was only entitled to a fourth of Gopal's share, the fact that Srinivasa (who was the family manager) had by his labours or even with the aid of his self-acquisitions improved the family properties or paid off its debts would not entitle him to claim a larger share. The learned Counsel for the respondent sought to support the lower Court's conclusion as a finding based on the principles applied in favour of family settlements; and he relied in this connection on the decisions in *Ramdas* v. *Chabildas*(1), *Anantanarayana Iyer* v. *Savithri Ammal*(2) and *Yechuri*

(1) (1910) 12 Bom. L.R. 621. (2) (1911) I.L.R. 36 Mad. 151.

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Ramamurthi v. *Yechuri Ramamma*(1). The grounds on which "family settlements" are supported are well established; but in applying to a case like the present observations in judgments dealing with family settlements, there is an obvious distinction, which ought not to be lost sight of, between cases in which the question of validity arises only as between the parties to the transaction and those in which it is sought to bind by the transaction persons who were only represented therein by one of the parties thereto. This distinction is material when it is sought to bind Hindu reversioners or minor coparceners in a joint family by transactions entered into by a widow or an undivided father. In this latter class of cases it will not be enough merely to prove that the transaction was intended to secure peace and harmony in the family or the preservation of its property and that it was not tainted by fraud or similar vitiating circumstances.

In *Ramkishore Kedarnath* v. *Jainarayan Ramrachhpal*(2) the sons of a Hindu father impeached an arrangement under which the father had allotted a share in the family property to one who claimed to be a coparcener as the result of an adoption. The sons contended that there had been no valid adoption; but the Courts in India, without trying this question, upheld the allotment on the ground that in the absence of any allegation of fraud or collusion the sons would be bound by their father's act, as

> "the arrangement was in the nature of a compromise of a claim either disputed or which might have been disputed".

(1) (1915) 30 M.L.J. 308. (2) (1913) I.L.R. 40 Cal. 966 (P.C.).

The judicial Committee remanded the case for further investigation, observing that if on a partition a share is given to a stranger (which the respondent would have been but for the alleged adoption)

"the partition may be impeached as a disposition of property made without consideration unless it can be supported as a *bona fide* compromise of a disputed claim".

I see no difference in principle between the allotment of a share to a person who has no legal claim and the allotment to an admitted coparcener of a share far in excess of his legal claim. The cases relied on by the respondent's learned Counsel will on examination be found to satisfy the test indicated in the extract above quoted. In the present case, the respondent's father raised a plea on the same lines in the written statement; but the respondent did not seriously attempt to establish it at the trial. I am therefore of opinion that the partition under Exhibit I cannot as such be held binding on the plaintiffs' branch.

The respondent is however entitled to succeed on another ground. Gopala had only one son at the date of the partition and his own share would then have been two-fifths of the whole estate. If on any grounds recognised by law, Srinivasa could be held to have become entitled at least to that share, the respondent could insist on maintaining the division under Exhibit I because Srinivasa had not thereby obtained more than his own one-fifth plus the two-fifths share of Gopala. On this footing plaintiffs 2 and 3 who were not in existence on the date of Exhibit I cannot claim any right to disturb the arrangement, Exhibit I; *Shivajirao* v. *Vasantrao*(1). It has

(1) (1908) I.L.R. 33 Bom. 267.

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been held in some decisions of this Court, *Peddayya* v. *Ramalingam*(1) and *Thangavelu Pillai* v. *Doraisami Pillai*(2), that it is open to one coparcener to relinquish his share to another coparcener individually and that no pecuniary consideration is necessary to validate such a relinquishment. It is, however, difficult to read into Exhibit I an intention on the part of Gopala to relinquish or transfer his share as such. The decision of the Judicial Committee in *Venkata Row* v. *Tuljaram Row*(3) is an authority against reading any such intention into the document; *see* also *Veeranna* v. *Seetanna*(4). But, as recognised in *Veeranna* v. *Seetanna*(4), there is another class of cases in which, though the father's transaction is not valid in law and did not distinguish his own share from that of his son, the law will split the transaction and on grounds of equity hold the father's transferee entitled to stand in his transferor's shoes and claim the share which he could have got if a partition between the transferor and his son had taken place at the date of the transfer. That this principle of equity may be invoked even in connection with transactions in the nature of a partition was recognised by the Judicial Committee in *Ramkishore Kedarnath* v. *Jainarayan Ramrachhpal*(5) already referred to. On page 981 their Lordships observe that, as between Kedarnath and Jainarayan,

> "it may well be that the latter may be entitled to insist that he stands in the shoes of the former as to the share which would come to Kedarnath on a partition; and that the Court, if that position were established, would itself, at Jainarain's

(1) (1888) I.L.R. 11 Mad. 406.
(2) (1914) 27 M.L.J. 272.
(3) (1921) I.L.R. 45 Mad. 298 (P.C.).
(4) (1929) 59 M.L.J. 139.
(5) (1913) I.L.R. 40 Cal. 966 (P.C.).

instance, decree a partition as between the plaintiffs on the one hand and Kedarnath on the other ".

As pointed out in *Veeranna* v. *Seetanna*(1), this principle of equity can be invoked only when there is a completed transfer by the father, and the transfer is not gratuitous. In *Venkata Row* v. *Tuljaram Row*(2) the Courts in India had applied this principle but the Judicial Committee reversed that decision because in their Lordships' opinion the facts of the case did not warrant its application. In the present case, Mr. Rajah Ayyar, the learned Counsel for the appellants, sought to exclude that principle on the ground that the transfer of the excess share under Exhibit I was gratuitous. He contended that, as Srinivasa must be deemed to have "blended" his self-acquisitions with the joint family property, the whole property that was divided under Exhibit I had become joint property and there was accordingly no independent consideration moving from Srinivasa. This question of "blending" was not distinctly raised by the plaintiffs at any stage of the case and the limitations governing such a plea are indicated in the recent judgment of the Privy Council in *Nutbehari Das* v. *Nanilal Das*(3). Even on the evidence as it stands, there is nothing to support the theory of "blending" so far as the house in the village is concerned. Further, assuming for the sake of argument that Srinivasa could not have enforced at law a claim to retain any portion of the properties as his self-acquisition, that will not by itself exclude the equities arising on a transfer for value. That, in

(1) (1929) 59 M.L.J. 139. (2) (1921) I.L.R. 45 Mad. 298 (P.C.).
(3) (1937) 2 M.L.J. 114 (P.C.).

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entering into the arrangement embodied in Exhibit I, Gopala acted, and rightly acted, on the footing that he had greatly benefited at the expense of Srinivasa is clearly established by the evidence. This, in my opinion, is sufficient to entitle Srinivasa to the benefit of the equitable principle above referred to; see *Natesa Iyer* v. *Rathai Ammal*(1). As the transfer had been completed by Exhibit I and the rights of the parties have to be determined as on the date of Exhibit I, the death of Gopala before the institution of this suit or the death of Srinivasa pending the suit can make no difference.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Newsam.

1937, August 3.

RM. AL. RM. ALAGAPPA CHETTIAR AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

KANNAPPA CHETTIAR AND THREE OTHERS (PLAINTIFFS 2 TO 5), RESPONDENTS.*

Insolvency—Composition scheme selling all "assets" of insolvents mentioned in schedule—"Assets"—Meaning of—If includes Hindu father's right to bind his son's share for proper reasons.

In pursuance of a composition scheme the Official Assignee sold all the "assets" of the insolvents described in their schedule with all the right, title and interest of the insolvents therein to certain persons. On a point arising as to the meaning of the word "assets",

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(1) (1908) 19 M.L.J. 62.

* Appeal No. 228 of 1935.