APPELLATE CIVIL.

Before Mr. Justice Varadachariar and Mr. Justice King.

NYAPATI NARAYANA RAO AND TWO OTHERS (DEFENDANTS), APPELLANTS,

1937, October 7.

v.

MUDHAVALAPU PURUSHOTHAMA RAO (PLAINTIFF), RESPONDENT.*

Hindu Law—Partition—Severance in status—Communication to other co-parceners of intention to become divided—Severance in status by—Receipt of communication by them condition if.

S and his son were members of a joint Hindu family. On 3rd August 1926 S sent to his son a registered notice of his intention to become divided from him. On 4th August 1926 S executed a will disposing of his share in the joint family property in favour of a stranger and died on 5th August 1926. The notice was in fact received by the son on 9th August 1926, though S would have been justified in expecting that in the ordinary course the notice would be delivered to his son on the 4th or at least on the 5th. It was contended that the division in status arose only on the 9th August when the son received the notice and that as S had died on the 5th and the estate had passed by survivorship to the son on that date the receipt of the notice on the 9th could not divest the son of the estate so vested in him and the will was therefore not valid.

Held that the issue of the notice was, so far as the testator was concerned, sufficient to prevent the operation of the principle of survivorship and that the will was valid.

Though the authorities lay down generally that the communication of the intention to become divided to other coparceners is necessary, none of them lays down that the severance in status does not take place till after such communication is received by the other coparceners. The reference to "communication" in the various cases is not to be interpreted as

* Appeal No. 114 of 1932.

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implying that the severance does not arise until notice has been actually received by the addressee or addressees.

Rama Ayyar v. *Meenakshi Ammal*(1) referred to.

Quaere as to what the legal position would be in a case where a notice is posted in circumstances when it will be obviously impossible for it to reach the addressee before the testator's death.

APPEAL against the preliminary decree of the Court of the Subordinate Judge of Guntur dated 28th March 1931 and the final decree of the said Court dated 2nd October 1931 and made in Original Suit No. 63 of 1928.

V. Subrahmanyam for *Vedantam Satyanarayana* for appellants.

N. Rama Rao for respondent.

VARADACHARIAR J.

The JUDGMENT of the Court was delivered by VARADACHARIAR J.—The question for decision in this case is whether the will (Exhibit H) said to have been executed by one Seshagiri Rao on 4th August 1926 is genuine and valid.

[His Lordship considered the evidence in, and the probabilities of, the case and held that Exhibit H was executed by the deceased Seshagiri Rao when he was in a sound disposing state of mind and proceeded :—]

As the deceased was a member of an undivided Hindu family, the question of his right to make a will disposing of his share in the joint family property has next to be considered. To enable him to do so, it is alleged by the plaintiff that he sent a registered notice, Exhibit J, on 3rd August 1926. Having regard to what we have already stated as to the advice that the deceased had been given on this matter, it is not by any means

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unlikely that this step would have been taken. The preparation of the draft for Exhibit J is spoken to by P.W. 10, a witness whom the trial Judge regards as quite respectable; and the writing and execution of Exhibit J is spoken to by P.W. 4 whom the learned Judge has unhesitatingly believed. We therefore see no reason to doubt the genuineness of Exhibit J nor the fact of its having been sent with the knowledge of the deceased. Exhibit J is a postcard and the postal seal shows that it was posted at Bezwada on 3rd August 1926. In the ordinary course it would have been delivered to the first defendant (one of the undivided sons of the deceased) at Guntur on the 4th, but it so happened for reasons to which we shall presently refer that it was not actually received by the first defendant till the 9th. An argument has accordingly been addressed to us as to whether the mere posting of Exhibit J on the 3rd August was sufficient to validate the will executed on the 4th when in fact the deceased died on the 5th before Exhibit J had been received by the first defendant. To obviate such an argument it was suggested on behalf of the plaintiff (the other son of the deceased) that the first defendant must have become aware of the contents of Exhibit J even on the 4th August and that he purposely evaded receiving it. We are not satisfied that there is sufficient proof of this or even some justification for the suggestion. Seeing that this suggestion had been made or might be made, the first defendant applied to the postal department for an exact statement of the reasons for the delay in the delivery and Exhibit III gives the material information. The first defendant resides in one

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postal division of Guntur whereas the Court is situate in another postal division. The result was that by the time that this postcard was taken to the first defendant's residence on the 4th, he had left for the Court and, on non-delivery at home, it was transferred for delivery at the other division but when it was taken to the Court on the 5th, the first defendant is said to have been absent from the Court. On the 6th and 7th he was admittedly in Bezwada after hearing of his father's death and as the 8th was a Sunday the registered postcard was delivered to him only on the 9th.

On the above facts it has been argued on behalf of the appellants that as communication to the other coparceners is necessary before a member of a joint Hindu family can become divided by a declaration of his intention to become so divided, it must be held in this case that the division in status arose only on the 9th August when the first defendant received Exhibit J and, as the testator had died on the 5th August, the testament cannot take effect so far as the joint family property is concerned. We are unable to accede to this contention. It is true that the authorities lay down generally that the *communication* of the intention to become divided to other coparceners is necessary, but none of them lays down that the severance in status does not take place till after such communication has been received by the other coparceners. The anomalous results following from any such view can easily be shown. It would be unfortunate indeed if the validity of a will should depend upon the accident as to whether a postman was able to find an addressee

on a particular date or at a particular place or not; and it will sometimes be a very difficult task for the Court to decide how far the addressee had with some knowledge of what is coming evaded receipt of the notice. An illustration will forcibly demonstrate the anomalous position. If a person should have a number of coparceners living in a number of places far remote from one another what is to be the *date* of division of status when notice had been sent by one of the coparceners to those various other coparceners? It certainly cannot be that he will become divided from the family on different dates; and here again the uncertainty that may arise from the delay in delivery due to avoidable or unavoidable causes is a fact to be taken into account. It may be that if the law is authoritatively settled, it is not open to us to refuse to give effect to it merely on the ground that it may lead to anomalous consequences; but when the law has not been so stated in any decision of authority and such a view is not necessitated or justified by the reason of the rule, we see no reason to interpret the reference to "communication" in the various cases as implying that the severance does not arise until notice has actually been received by the addressee or addressees.

The only reported decision in which the question of the date of severance was discussed is a judgment of MADHAVAN NAIR J. in *Rama Ayyar* v. *Meenakshi Ammal*(1). So far as it goes, it is an authority against the appellants' contention, because the learned Judge held that even if it should be assumed that the receipt of the notice

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by the other coparceners is material, the severance of status relates back to the date when the communication was sent. As pointed out by the learned Judge, the principle emphatically stated by the Privy Council that the other coparceners have no choice or option in the matter clearly indicates that the date of the receipt of the notice by them cannot be material. This decision of MADHAVAN NAIR J. was sought to be distinguished by the appellants' learned Counsel on the ground that in that case the testator lived till after the date of the service of the notice. In view of the basis of the decision, we do not see how that can make any difference. It was argued that if on the 5th the estate passed by survivorship to the first defendant, the receipt of the notice on the 9th cannot divest the first defendant of the estate so vested in him. The answer is that the issue of the notice is, so far as the testator is concerned, sufficient to prevent the operation of the principle of survivorship. He was certainly justified in expecting that in the ordinary course his notice would have been delivered to the first defendant on the 4th or at least on the 5th. It is unnecessary for us to say what the legal result would be in a case where a notice is posted in circumstances when it will be obviously impossible for it to reach the addressee before the testator's death. It may be possible to argue that this is merely a device to defeat the law, but no such suggestion can be made in the circumstances of this case. The appeal fails and is dismissed with costs.

A.S.V.