As this case relates to religious rights and ceremonies at a temple of national importance and the questions in issue are in themselves of great public and private importance, the application will be granted on the usual conditions. Costs of the applicant will be made costs in the appeal.

A.S.V.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Somayya.

ALASYAM RAMAPPA (FIRST DEFENDANT), APPELLANT,

v.

PANYAM THIRUMALAPPA AND FOURTEEN OTHERS (PLAINTIFF AND DEFENDANTS 2 TO 8 AND 10 TO 16), RESPONDENTS.*

1939, March 14.

Indian Registration Act (XVI of 1908), ss. 17 and 49—Partnership—Dissolution—Immovable properties purchased out of partnership assets—Partners' rights after dissolution in—Document declaring—What amounts to—Registration of—Necessity—Deed not registered—Admissibility in evidence of.

On the dissolution of a partnership it was agreed that immovable properties which had been purchased by the firm out of the partnership assets should not be divided among the three partners of the firm, but should be held by them as joint tenants with equal rights. The terms of the dissolution were set out in full in the firm's day book and the statement (Exhibit A) was signed by all the partners. Exhibit A provided, in so far as it related to the said properties, that "P, A and V, these three individuals," (the three partners) "have rights for equal shares to the lands" (the said properties). On the

* Letters Patent Appeal No. 81 of 1937.

RAMAPPA v. THIRUMALAPPA.

death of one of the partners the said immovable properties came into the possession of his son, the appellant. The first respondent, the son of another partner who had also died, filed a suit for partition of the said properties and delivery to him of the one-third share which he claimed therein.

Held that Exhibit A was an instrument which declared the rights in the properties from the date of dissolution of the partnership within the meaning of section 17 of the Indian Registration Act and therefore should have been registered and that as it was not registered it could not be given in evidence by reason of the provisions of section 49 of that Act and no claim could be made under it.

Exhibit A was drawn up and signed in order that the post-dissolution rights should be declared and placed beyond dispute.

APPEAL under Clause 15 of the Letters Patent against the judgment of VARADACHARIAR J. in Second Appeal No. 722 of 1933 preferred to the High Court against the decree of the District Court of Anantapur in Appeal Suit No. 28 of 1930 preferred against the decree of the Court of the District Munsif of Gooty in Original Suit No. 353 of 1928.

K. Someswara Rao for *Kasturi Seshagiri Rao* for appellant.

Ch. Raghava Rao for first respondent.

Other respondents were not represented.

The JUDGMENT of the Court was delivered by LEACH C.J.—The appellant's father, one Nattekalappa, the first respondent's brother Yeriakalappa, and the second respondent carried on business in partnership from 1892 until 3rd May 1904 when a dissolution took place. During the existence of the partnership certain immovable properties were purchased out of the profits of the business. One lot comprising four items was purchased in the name of the appellant's father and another lot comprising three items was

purchased in the names of the appellant's father and the first respondent's brother. On the dissolution it was agreed that the immovable properties should not be divided among the partners, but should be held by them as joint tenants with equal rights. The terms of the dissolution were set out in full in the firm's day book and the statement (Exhibit A) was signed by all the partners. The appellant's father died in 1921 and the first respondent's brother in 1918, The immovable properties eventually came into the possession of the appellant. In 1928 the first respondent filed a suit in the Court of the District Munsif of Gooty for partition of the properties and delivery to him of the one-third share which he claimed therein. The appellant resisted the claim. He contended that the properties did not belong to the partnership, but to his father; that the suit was barred by the provisions of article 106 of the Limitation Act, not having been brought within three years of the dissolution of the partnership; and that Exhibit A could not be admitted in evidence by reason of non-registration, which precluded any claim being made under it. The District Munsif rejected the appellant's contentions and decreed the suit. On appeal the District Judge of Anantapur held that the properties in suit were not partnership properties, but properties which belonged exclusively to the appellant's father. He also held that the suit was barred by limitation and that Exhibit A required registration. The appeal was therefore allowed and the suit dismissed. The first respondent then filed a second appeal which was heard by VARADACHARIAR J. The learned Judge restored the decree of the District Munsif. He held that the District Judge had entirely failed to appreciate the evidence which showed

RAMAPPA v. THIRUMALAPPA. LEACH C.J.

conclusively that the properties belonged to the partnership, that the suit did not fall within article 106 of the Limitation Act and that the law did not require Exhibit A to be registered. The learned Judge having granted a certificate under Clause 15 of the Letters Patent, the appellant has filed the present appeal.

It is not necessary to decide whether VARADACHARIAR J. was justified in reversing the decision of the District Judge on the question of the ownership of the properties because we consider that the appellant is entitled to succeed on his contention that Exhibit A required to be registered.

Exhibit A, after describing the immovable properties purchased by the firm out of the partnership assets, proceeds:

"Panyam Yerakalanna, Alasyam Nettakalappa and Voruganto Basappa, these three individuals, have rights for equal shares in the amount of Rs. 1,106-3-1 mentioned in the balance sheet from Nos. 1 to 9, and to the lands mentioned in pages 232-233.

Particulars of the amount of debts to the extent of Rs. 2,597-8-9 mentioned in pages 10 to 13 which have to be paid by us three, mentioned in numbers 14 to 16—particulars thereof:

	RS.	A.	P.	
No. 14, Panyam Yerakalanna..	700	11	9	with interest thereon.
No. 15, Voruganti Nagappa ..	649	10	5	..
No. 16, Alasyam Nettakalappa.	1,247	2	7	..

We the three aforesaid individuals have agreed thereto and settled the accounts."

There is here a declaration, made on the dissolution of the partnership, that the three persons who had constituted the partnership had equal rights in the properties which had been purchased out of the profits. The fact that the agreement embodying the terms of the dissolution was entered in the day book and not drawn up separately makes no difference.

The words written in the book constitute an agreement in writing. VARADACHARIAR J. held that Exhibit A did not require registration because it did not operate to transfer property from the partnership to its members. He referred to the provisions of section 253 of the Contract Act which states that partners are joint owners of the properties purchased out of partnership funds, and to the decision in *Samuvier* v. *Ramasubbier*(1) which deals with this section. The learned Judge treated Exhibit A as being merely a statement of existing facts.

Section 17 of the Registration Act requires non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, any right, title, or interest, in immovable property to be registered. In our opinion Exhibit A is an instrument which declares the rights in the properties from the date of dissolution of the partnership and therefore should have been registered. As it is not registered it cannot be given in evidence by reason of the provisions of section 49 of the Act. In *Bageshwari Charan Singh* v. *Jagarnath Kuari*(2) the Privy Council accepted the interpretation of the word "declare" given by WEST J. in *Sakharam Krishnaji and another* v. *Madan Krishnaji and others*(3) where he said that the word implies a declaration of will and not a mere statement of fact. Lord DUNEDIN who delivered the judgment of the Board pointed out that the distinction is between a mere recital of a fact and something which itself creates a title. We regard Exhibit A as being within the latter category.

As I have already indicated, part of the properties were purchased in the name of the appellant's father

(1) (1931) I.L.R. 55 Mad. 72. (2) (1931) I.L.R. 11 Pat. 272 (P.C.).
(3) (1881) I.L.R. 5 Bom. 232.

RAMAPPA v. THIRUMALAPPA. LEACH C.J.

and part in the names of the first respondent's brother and the appellant's father. Up to the time of the dissolution the partners must be regarded as joint owners of the properties within the meaning of section 253, but they were not entitled to specific shares and the rights they possessed were subject to the liabilities of the partnership on dissolution. Until an account had been taken and provision had been made for the discharge of the liabilities, no partner could claim to be entitled to have a definite share in a particular asset. In allotting on a dissolution what remains after making provision for the firm's debts, and the remaining assets include immovable properties, it does not follow that the partners will take the immovable properties in equal shares, even if they had equal rights in the partnership. What each partner receives will depend on the circumstances and the nature of the assets which remain for division. A partner, for instance, may have overdrawn his account and disentitled himself to equal division. It so happened in this case that it was possible to arrange that the immovable properties should be held by the persons who had formed the partnership as joint tenants with equal rights, but it might have been otherwise. Exhibit A was drawn up and signed in order that the post-dissolution rights should be declared and placed beyond dispute. In our opinion the declaration clearly falls within section 17 of the Registration Act, which means that the document cannot now be admitted in evidence. This being the case, the Court can only regard the properties as being partnership assets and the suit is consequently hopelessly time-barred. The appeal will therefore be allowed with costs throughout.

A.S.V.