APPELLATE CIVIL.

Before Mr. Justice Mockett and Mr. Justice Krishnaswami Ayyangar.

1939, August 7.

RAMAYYA GOUNDAN (PLAINTIFF), APPELLANT,

v.

KOLANDA GOUNDAN AND THREE OTHERS (DEFENDANTS), RESPONDENTS.*

Hindu law—Joint family—Manager—Power of, to allot to individual members portion of family property for maintenance without effecting severance of status—Income and savings of such member out of such lands—Non-accountability for—Corpus of the property—Reversion back to the family in the absence of express provision to the contrary.

It is within the competence of a manager of a joint Hindu family, without effecting a severence in status, to allot to individual members a sufficient portion of the family property having regard to its status and circumstances in order to enable them to maintain themselves out of its yield without having to bring the same into the family granary for common consumption. In such a case the individual members are not accountable for the income of the property so allotted but the corpus of the property, in the absence of an express provision to the contrary, will revert to the family.

APPEAL against the decree of the Court of the Subordinate Judge of Salem, dated 23rd December 1935, in Original Suit No. 46 of 1934.

K. V. Sesha Ayyangar and *C. M. J. Ernest* for appellant.

D. Ramaswami Ayyangar for *C. S. Venkatachari* and *K. S. Sundaram* for respondents 1 and 3.

Other respondents were not represented.

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* Appeal No. 136 of 1936.

JUDGMENT.

KRISHNASWAMI AYYANGAR J.—This is an appeal by the plaintiff in a suit for partition which was tried and decided by the Subordinate Judge of Salem. The appellant is one of four brothers and was admittedly entitled to a fourth share of the joint family properties. The only question in the appeal is, what are the common properties, movable and immovable, which belonged to the joint family and liable to be divided between the appellant and his three brothers who are respondents 1 to 3 in the appeal? A decree for partition has been passed by the Subordinate Judge in respect of such only of the immovable properties as according to his finding formed the ancestral estate. The plaintiff's claim, however, extended further and covered items of properties standing in the names of the individual defendants as also money outstanding in their names. As regards these items of properties and outstandings the learned Subordinate Judge held against the appellant and to that extent negatived his claim. Before us, the arguments advanced on behalf of the appellant were confined to these disallowed items.

The admitted facts are these. The appellant and the three respondents are the sons of one Kali Goundan who died in 1926. The family admittedly became divided in status on 22nd August 1925 on which date the brothers executed a muchilika in favour of certain arbitrators with a view to a division of the family properties. The execution of the muchilika without more was effective enough to bring about a disruption. Whether a severance in status had taken place at an earlier date is a matter in controversy, but it is not necessary for the purpose of this appeal to decide it. The parties belong to the caste of Goundans and,

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according to the undisputed evidence in the case, it would seem that in this community as soon as a son marries he leaves the family residence, sets up for himself and begins to live separately with his wife in a separate house or a portion of a house alloted to him by the father or manager of the family. Commensality ceases but no separation in estate follows. It often happens that a portion of the family lands is allotted to him in order that he may cultivate it and maintain himself, his wife and children out of its income. Such an arrangement makes for convenience and harmony and tends to promote the continuance of goodwill while avoiding at the same time the kind of friction that often occurs in a growing family living together under a common roof with a common mess. The custom appears to have been acted upon in the family of the parties to this litigation. Each one of the brothers as soon as he married was allowed to set up separately for himself, being given a portion of the family property approximating roughly to his share for his own exclusive enjoyment. The first and the second defendants must have begun to live separately a long time back and cultivate and enjoy for themselves the lands that were allotted to them by the father. At the date of the suit it would appear that the first defendant was about fifty-five years old or thereabouts and he must have started to live separately years before. The plaintiff was himself about forty years at the time and his marriage appears to have taken place about fifteen years prior. The allotments made to the brothers of what, I have no reason to doubt, were but reasonable portions of the family lands by way of a fair provision for their maintenance have never in fact been challenged at any time.

I think it is perfectly within the competence of the manager of a Hindu family to allot to individual members a sufficient portion of the family property having regard to its status and circumstances in order to enable them to maintain themselves out of its income. So long as the provision is fair and reasonable and the manager acts in good faith without making the occasion a pretext for favouritism or injustice, the arrangement would be upheld by a Court as within the powers of the managing member. For it cannot be denied that every member of the family, while it remains joint, has a right to be maintained out of the common assets. When the manager proceeds *bona fide* to satisfy such a claim, which is plainly the inherent right of every member, he is merely discharging a duty incumbent upon him under the law. In fact, the propriety of his act in this behalf cannot be questioned. For, when the manager acts in such circumstances, it must be regarded as the act of the entire family not capable of being impeached at the instance of a single dissentient member. His consent will be presumed for every dealing with the family estate by the manager dictated by the necessities of the family or of the individuals composing it.

Mr. Sesha Ayyangar, the learned Counsel for the appellant, has not argued that the provision made for each one of the brothers in this case, as and when he married and began to live apart, was either extravagant in itself or incommensurate with the size of the family estate. But what he did urge was that, irrespective of these considerations, the Hindu law stamps the savings derived from every portion of the joint property with the character of joint family property so as to make them as such divisible among the members as the family property itself. It is not

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necessary for the purpose of this appeal to go into the larger question as to the character of the income in general derived from a portion of the joint family property when it happens to be in the hands of an individual member. If a member of the family has been entrusted with a block of joint family property for the purpose of mere management on behalf of the family and not for exclusive enjoyment or, if he, against the will of the manager, takes and retains possession of it and derives income out of it, it may well be that that income will partake of the joint family character. That however is not the kind of question that confronts me in the present case. As I have said, the joint family acting through the manager has made an allotment of property to the member concerned in order that he may maintain himself out of it without having to bring its yield into the family granary for common consumption. In such a case it is impossible to argue that the family could have intended to make the member accountable for the income of the property so allotted. The idea, undoubtedly, when an arrangement of this kind is made, is that, while the corpus of the property should continue to remain joint, the income should exclusively belong to and be at the disposal of the member concerned.

In this case there is every reason for thinking that the acquisitions by the brothers were as much the result of their own industry and thrift as they were the natural produce of the land itself. The acquisitions claimed represent savings extending over a fairly long period. Years after the allotment and years after the acquisition it is scarcely just or equitable that the acquirer should be forced to share the product of his thrift and industry with, it may be, an

indolent or ease-loving coparcener. I do not think that there is any principle of Hindu law which tends to the perpetuation of such gross injustice and, in the absence of definite authority, I am not prepared to accede to such a proposition. In fact there is authority to the contrary in a decision of a Bench of this Court reported as *Bengal Insurance & Real Property Co., Ltd.* v. *Velayammal*(1). At the bottom of page 1001 the learned Judges observe as follows:—

"The question then is whether any profit made out of money paid to a member of a joint family by the manager for his personal use, which he is free to spend as soon as he receives it, must, because he chooses to invest it for some purpose which is clearly not intended to be for the benefit of the family, be deemed to be a family acquisition. A profit made by the member of a joint family from the enjoyment of joint property without detriment to it is his separate self-acquired property; *Lachmeswar Singh* v. *Manowar Hossein*(2). When money is given to a member of a family by the manager from family funds to be spent by him for his personal use, it seems to us that any profit made by him can hardly be said to be in detriment of the joint property."

This decision does support the conclusion that I have myself reached though it seems to proceed on a somewhat different principle. I may observe that in this case emphasis is laid on the fact that the acquisition was made without, as it was termed, detriment to the family property. It seems to me that it would be more appropriate to look at this question from the point of view of the right of each individual member of the family to be maintained out of the common assets and the duty of the manager to maintain or make a reasonable provision for the maintenance of the junior members. A provision so made must be held to be binding upon the family and every member

(1) I.L.R. [1937] Mad. 990. (2) (1891) I.L.R. 19 Cal. 253 (P.C.).

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of it. I may in this connection perhaps refer to the analogical case of a widow to whom property is often handed over for her enjoyment in lieu of maintenance. It cannot be suggested that any savings from the income of such property can be called back by the family which made the provision. The corpus of the property would no doubt, in the absence of an express provision to the contrary, revert to the family, but the savings out of the income will not; not even at her death, unless incorporated with the property itself by a consentient act of hers. I am unable to see any difference in principle between a maintenance arrangement in favour of a female member of the family and that made almost in similar circumstances to a junior male member of the family. I am therefore of opinion that there is no substance in the appellant's contention, and I must accordingly negative it.

I may also point out that the plaintiff and the other members of the family seem all along to have proceeded upon the footing that the income derived by each member from out of the lands allotted to him was his own and not that of the family. In 1925 the four brothers executed a panchayat muchilika in favour of certain arbitrators with a view, as I have already mentioned, to get the family properties partitioned between them. It is remarkable that in this document the brothers wanted a division only of the family outstandings belonging to the money-lending business carried on by the father and of the ancestral lands, and did not put forward a claim for the division of the acquisitions of the individual members. It is conceded that on this date there were individual acquisitions in the shape of both outstandings and immovable properties standing in the names of each of the brothers and yet nobody ever thought of advancing a

claim to divide them. To my mind this is a striking piece of evidence against the present contention of the appellant. The consciousness of the members of this family therefore would undoubtedly seem to be that the income which each brother derived out of the portion of the property cultivated by him was to be his entirely. I am accordingly of opinion that the appeal fails and must be dismissed with costs of respondents 1 and 3.

MOCKETT J.—I agree.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Burn and Mr. Justice Stodart.

1939, September 1.

MYTHILI AMMAL (FIRST RESPONDENT—DECREE-HOLDER), APPELLANT,

v.

JANAKI AMMAL AND ANOTHER (PETITIONER AND RESPONDENT-JUDGMENT-DEBTOR), RESPONDENTS.*

Indian Evidence Act (I of 1872), sec. 65 (a) and (e)—Income-tax return—Secondary evidence of—Certified copy—Admissibility in evidence of—Sec. 74 of Evidence Act—"Public document".

In execution of a money decree obtained by the appellant against her husband, the second respondent, she attached a house as belonging to her husband. The first respondent, the mother of the second, filed a claim praying that the attachment might be raised on the ground that the house was her own. At the trial of that claim the appellant filed certified copies of certain income-tax returns made by the first respondent when

*Appeal Against Order No. 470 of 1937.