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OTTER, J.

The only thing that can be *ordered*, however, is an enquiry, and though by Section 4 of the Code it is provided that 'enquiry' does not include 'trial', the Subordinate Magistrate is not and cannot be *ordered* to conduct a 'trial' at all.

He *may* proceed to try the accused, but this is entirely a matter for him.

This view was expressed at some length in my order of reference and I do not propose to elaborate it here. Nor do I think it necessary to discuss further the two cases which I have referred to, and which prompted this reference. I need only say that so far as they contain expressions of opinion differing from the view I have all along held, I do not agree with them, for the reasons I endeavoured to advance in the order of reference.

APPELLATE CIVIL.

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March 4.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Das.

D. PACKIRISAWMY PILLAY

v.

V. P. DORASAWMY PILLAY AND OTHERS.*

Hindu Law—Coparcenery—Legitimate and illegitimate sons—Self-acquired property—Family arrangements between Sudra father and his illegitimate sons—Sons taking property as co-owners under a deed—Grandson's claim as coparcener.

Coparcenery in a joint Hindu family, except in the case of an adoption, comes into existence as the result of the birth of a coparcener, and cannot be created by contract or in any other way.

Legitimate sons in an undivided Hindu family governed by the Mitakshara at birth become coparceners with their father in the ancestral property of the family, but illegitimate sons never can acquire at birth or in any other way a right of coparcenery with their father.

Where a Sudra father by way of a family arrangement transfers *inter vivos* his self-acquired property to his illegitimate sons by a deed the effect of which

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* Civil First Appeal No. 19 of 1930 from the judgment of the District Court of Amherst in Civil Regular No. 28 of 1929.

is to make them co-owners of the property subject to terms and conditions which in themselves are inconsistent with the conditions under which coparceners hold property, the sons take the property not as coparceners in a joint Hindu family but as joint owners, and a grandson born after the date of the deed cannot claim any interest in the property as a coparcener in a joint Hindu family.

Hazari Mall v. *Abaninath*, 17 C.W.N. 280 ; *Jogendro* v. *Nityanand*, I.L.R. 18 Cal. 151 ; *Lal Ram* v. *Deputy Commissioner*, *Partabgarh*, 50 I.A. 265 ; *Muddun Gopal* v. *Ram Baksh*, 6 Suth. W. R. 71 ; *Myna Boyee* v. *Ootaram* 8 Moo.I.A. 400 ; *Sadu* v. *Baiza*, I.L.R. 4 Bom. 37 ;—*referred to*.

Shamu v. *Babu Aba Kalwat*, I.L.R. 52 Bom. 200—*doubted*.

Hay (with *Menon*) for the appellant. The main question is whether the properties derived under the deed by the seven illegitimate sons were ancestral in their hands. If ancestral, then plaintiff as a legitimate son of one of them had acquired an interest from the time of conception. It is true that the illegitimate sons were not and could not be coparceners with their putative father, but illegitimate sons together with legitimate sons inherit their father's self-acquired properties as members of a joint undivided Hindu family and succeed to each other by survivorship. *Sadu* v. *Baiza* (1) ; *Jogendro Bhupati* v. *Nityanand* (2) ; affirmed in *Raja Jogendra* v. *Nityanand* (3) ; *Shamu* v. *Balu Kalwat* (4) ; *Ramalinga* v. *P. Goundan* (5) ; *V. Subramania Ayyar* v. *Rathnavelu* (6) ; *Karuppannan Chetty* v. *Bulokam Chetty* (7) ; *Rajani Nath* v. *Dey* (8) ; *Kamulammal* v. *Visvanath* (9). The fact that the sons were born of different concubines does not affect the question. See *Jogendro's* case at page 714 (2). Such properties when received by way of gift, or at the expense of the estate, have the same characteristics as would have attached to them

(1) I.L.R. (1878) 4 Bom. 37 (F.B.)
(2) (1885) I.L.R. 11 Cal. 702.
(3) (1890) 17 I.A. 128.
(4) (1927) I.L.R. 52 Bom. 300.
(5) (1901) I.L.R. 25 Mad. 519.
(6) (1916) I.L.R. 41 Mad. 44 (F.B.)
(7) (1899) I.L.R. 23 Mad. 16.
(8) (1920) I.L.R. 48 Cal. 643 (F.B.)
(9) (1922) 50 I.A. 32.

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upon descent. *Muddun Gopal* v. *Ram Buksh* (1); *Hazari Mall* v. *Abaninath* (2) reviewing the case law. It is unnecessary to consider the divergent views held by the Bombay and Madras High Courts in (1886) 10 Bom. 528; (1886) 12 Bom. 122; (1901) 24 Mad. 429. In the present case the intention of the father and sons is unequivocally indicated in the deed, and the properties would be ancestral according to the views of the Calcutta, Bombay and Madras High Courts. The Allahabad High Court in *Parsotam Rao* v. *Janki Bai* (3) misapprehended the Bombay view which it purported to approve. See *Lal Ram* v. *Deputy Commissioner, Partabgarh* (4). It cannot be contended that the transfer was not a gift merely because the sons took the estate burdened with the obligations attaching to it. The debts could have been met out of the secured outstandings alone. As a family arrangement it is fair and should be upheld. *Sri Gajapathi Radhika* v. *Sri Gajapathi Nilamani* (5), *Gordon* v. *Gordon* (6). In effect the sons undertook to hold the properties in the same manner in which they would have held them if they had devolved on them upon death. By that undertaking they obtained the properties, and by that they must be bound.

N. M. Cowasjee (with *Jaganathan*) for the respondents. The rights of the parties depend on the true construction of the Deed of December 1904, which is not a deed of gift but a contract between Packiriswamy Pillay and his sons. Statements in the deed as regards coparcenery relationship are obviously erroneous, for there cannot be coparcenery

(1) 6 W.R. 71.
(2) (1912) 17 C.W.N. 280.
(3) (1907) I.L.R. 29 All. 354.
(4) (1923) 50 I.A. 265.
(5) (1870) 13 M.I.A. 497.
(6) (1819) 36 E.R. 910.

between a Sudra putative father and his illegitimate son. The properties comprised in the deed were the self-acquired properties of Packiriswamy.

Conception of coparcenery presupposes Sapinda relationship and legal marriage and this corporate body with its heritage is purely a creature of Hindu Law and cannot be created by act of parties.

The cases cited to show that property acquired by gift or will becomes ancestral property in the hands of the father are all cases where legitimate issue have been the contesting parties although the result of the authorities is conflicting. In 50 Indian Appeals 260 the Judicial Committee left the point open with the remark that having regard to the conflicting decisions of the various High Courts their Lordships would prefer to decide on their own construction of the original Hindu Text. The cases cited to show that an illegitimate son is entitled to succeed by way of inheritance on the death of his father are equally irrelevant and have no bearing on the point in controversy. We contend that the deed should also be supported as a family compromise acted on by the parties for over 25 years. This suit is vexatious and it is another attempt made by the appellant's father in the name of his minor son to seek reliefs that he failed to secure in the previous litigation. The following cases were referred to during the argument : *Jogendro* v. *Nityanand* (1) ; *Ramalinga* v. *P. Goundan* (2) ; *Ram Saran* v. *Tek Chand* (3) ; *Krishnayyan* v. *Muthusami* (4) ; *Gopalasami* v. *Arunachalam* (5) ; *Lal Ram* v. *Deputy Commissioner, Partabgarh* (6).

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(1) (1891) I.L.R. 18 Cal. 151.
(2) (1901) I.L.R. 25 Mad. 519.
(3) (1906) I.L.R. 28 Cal. 194.
(4) (1884) I.L.R. 7 Mad. 407.
(5) (1903) I.L.R. 27 Mad. 32.
(6) (1923) I.L.R. 45 All. 596.

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PAGE, C.J.—In this appeal some interesting and abstruse questions of Hindu law have been canvassed before us, but, in my opinion, the case turns upon the construction of a simple agreement by which the rights of the parties are determined.

S. Packirisawmy Pillay was a Sudra, governed by the Benares School of Hindu law. He possessed self-acquired property, moveable and immoveable, of considerable value. He had issue one legitimate daughter, and seven illegitimate sons, some by one concubine, and some by another.

It appears that he was under the impression that he and his daughter and his seven illegitimate sons were coparceners in a joint Hindu family. It is common ground that in taking this view he was entirely mistaken. It is elementary law that a Hindu father is *dominus rerum* and absolute owner of his self-acquired property, and can dispose of it in any way that he chooses. The whole of the property of S. Packirisawmy Pillay being self-acquired property, it is unnecessary to discuss his right to dispose of any ancestral property that he might have possessed; and upon that subject I refrain from expressing any opinion.

For the purpose of the present appeal it may be assumed, without deciding, that, save as provided under the Mitakshara, Chapter I, section 4, paragraph 1, where a Hindu father by will or *inter vivos* transfers his self-acquired property by way of gift to his sons who in the absence of a transfer by the father would take the property by way of inheritance, the sons after the death of the father hold the property as coparceners in a joint Hindu family, at any rate where the father had indicated an intention that the sons should take it as ancestral property; see Mitakshara, Chapter I, section 4, paragraph 1

"whatever else is acquired by the coparcener himself without detriment to his father's estate, or as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs;" *Muddun Gopal Thakoor and others* v. *Ram Buksh Panday and others* (1); *Hazari Mall Babu* v. *Abaninath Adhurjya and others* (2); and *Lal Ram Singh and others* v. *Deputy Commissioner of Partabgarh* (3). The foundation of this strange doctrine I apprehend to be that the sons should not be at liberty after the father's death to dispose of the property at pleasure, and in that way deprive the grandsons of the benefits which they might fairly expect to receive as coparceners in a joint Hindu family. It may further be assumed that in such circumstances after the father's death his illegitimate sons and his legitimate sons would be regarded as coparceners in a joint Hindu family in respect of the property so acquired, though it may be not in equal shares. [*Sadu* v. *Baiza and Genu* (4) and *Jogendro Bhupati Hurrochundra Mahapatra* v. *Nityanand Man Sing* (5)]. For reasons that I shall state hereafter it is unnecessary to decide in the present case, and I refrain from expressing an opinion as to whether the High Court of Bombay in *Shamu Bin Shripati and another* v. *Babu Aba Kalwat and others* (6) was right in holding that the doctrine to which I have referred would apply where the only sons of the father surviving at his death are illegitimate sons by one or more concubines. Clearly it would not apply where the sons were the issue of an adulterous, or a merely casual, intercourse.

Among the regenerate classes an illegitimate son possesses only a right to maintenance, and has no

(1) (1863) 6 Sutherland W.R. 71.
(2) (1912) 17 C.W.N. 280.
(3) (1923) 50 I.A. 265.
(4) (1878) I.L.R. 4 Bom. 37.
(5) (1891) I.L.R. 18 Cal. 151.
(6) (1927) I.L.R. 52 Bom. 300.

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rights of inheritance; but with respect to Sudras, because of the notion that they are less continent and controlled in their matrimonial relations, the curious doctrine exists in Hindu law that the illegitimate sons, if *dasiputras*, possess certain rights of inheritance to their father's separate property, and after the father's death are entitled to claim a share in the joint family property. During his father's life-time, however, a *dasiputra* has no right to, or interest in, the separate property of his father which he can dispose of as he wills. Coparcenery in a joint Hindu family, except in the case of an adoption, comes into existence as the result of the birth of a coparcener, and cannot be created by contract or in any other way [*Myna Boyee and others* v. *Ootaram Myaram and Taukooram* (1)]. Legitimate sons in an undivided Hindu family governed by the Mitakshara at birth become coparceners with their father in the ancestral property of the family; but illegitimate sons never can acquire at birth or in any other way a right of coparcenery with their father. In the Mitakshara, Chapter I, section 12, it is provided that "even a son begotten by a Sudra on a female slave may take a share by the father's choice. But if the father be dead, the brethren should make him partaker of the moiety of a share, and one who has no brothers, may inherit the whole property in default of a daughter's son." Again, "the son begotten by a Sudra on a female slave obtains a share by the father's choice or at his pleasure. But after (the demise of) the father, if there be sons of a wedded wife, let these brothers allow the son of the female slave to participate for half a share; that is, let them give him half as much as is the amount of one brother's allotment." In *Jogendro Bhupati Hurrochundra Mahapatra* v.

(1) 8 Moo. I.A. 400 at p. 420.

Nityanand Man Sing (1) at page 155 Sir Richard Couch commented upon these passages as follows :—

"Now, it is observable that the first verse shows that during the lifetime of the father the law leaves the son to take a share by his father's choice, and it cannot be said that at his birth he acquires any right to share in the estate in the same way as a legitimate son would do. But the language there is very distinct, that 'if the father be dead the brethren should make him partaker of the moiety of a share.' So in the second verse the words are that the brothers are to allow him 'to participate for half a share' and later on there is the same expression :—'The son of the female slave participates for half a share only.' In these circumstances I should require further argument before I give my assent to the view that where a father transfers *inter vivos* his separate property to his illegitimate sons, on the father's death they hold the property, not as separate property, but as coparceners of ancestral property in a joint Hindu family. In the present case, however, it is unnecessary to express a decided opinion on the subject, having regard to the facts disclosed in the evidence."

On the 9th of December 1904 S. Packirisawmy Pillay, for himself and his daughter, and his sons executed an indenture in the following form :—

"THIS INDENTURE made this 9th day of December 1904 between S. Packirisawmy Pillay, son of the late Thanno Pillay, trader, on behalf of himself and Parwathy Ammal, a minor, his daughter, both residing in Nayabusti, 4th Division, Moulmein, of the one part and (1) P. Govindasawmy Pillay (2) P. Subramonien Pillay, (3) P. Dorasawmy Pillay ; (4) P. Moorgassen Pillay ; (5) P. Ramachandram Pillay ; (6) P. Uthrapathy Pillay, and (7) P. Ganapathy Pillay, sons of the said S. Packirisawmy Pillay (the two last named, who are minors, represented by their four brothers first named) of the other part. WHEREAS the said S. Packirisawmy Pillay who is of the Sudra caste and governed by the Mitakshara Law has one daughter the said Parwathy Ammal, unmarried, still a minor, born of his deceased married wife Sampoornam Amah and the seven sons above named born out of wedlock. AND WHEREAS the said daughter and sons are, by the law applicable to them and their said father as members of an undivided Hindu family coparceners

(1) (1891) I.L.R. 18 Cal. 151.

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with their said father in all the property both moveable and immoveable acquired and possessed by him and by them up to the date of these presents a complete list whereof (a rice mill at Mudon alone excepted) is given in the first, second and third schedules hereto attached and which is now after allowing for bad debts of the estimated value of rupees two hundred thousand. AND WHEREAS there is now due and payable by the said family the sum of one lac of rupees to the parties whose names are given and as set out in the fourth schedule also hereto attached. AND WHEREAS the said S. Packirisawmy Pillay is failing in health and is desirous on behalf of himself and his daughter of severing the coparcenership so far as it subsists between them and his said seven sons and his said sons are ready and willing to such severance. AND WHEREAS it has been agreed between the said S. Packirisawmy Pillay and his said sons that they shall partition the said joint family property and that he shall retain for himself and his said daughter as their share in severalty the sum of twenty-five thousand rupees in cash and four thousand rupees worth of jewellery as detailed in Schedule II hereto attached and that the freehold and leasehold hereditaments and the outstandings comprised in the Schedules I and III (A, B and C) shall henceforth be taken and held by his said seven sons as their joint property as an undivided family on their own and joint account. Now this indenture witnesseth that in pursuance of the aforesaid agreement in this behalf and in consideration of the said S. Packirisawmy Pillay being allowed to take for himself and daughter the whole of the said sum of twenty-five thousand rupees and four thousand rupees worth of jewellery which his said sons hereby agree to and hereby assign to him their undivided shares therein and also in consideration of the respective covenants entered into by the said parties with each other as hereinafter contained, he the said S. Packirisawmy Pillay according to his and his daughter's share and interest in the freehold and leasehold hereditaments and other property hereby intended to be hereby respectively granted, assigned and transferred, doth, on behalf of himself and his said daughter grant, assign and transfer unto and to his said seven sons collectively and their respective heirs, executors, administrators and assigns as the case may require all and singular the Freeholds and Leaseholds and other property described and comprised in the said Schedules I and III (A, B and C) to have and to hold the said Freeholds and to hold the said Leaseholds unto the use, as regards the Freeholds, of his seven sons their heirs and assigns

and, as regards the Leaseholds and other property set out in the said Schedules unto his said seven sons their executors, administrators and assigns. And all the estate right title and interest of him the said S. Packirisawmy Pillay and of his daughter Parwathy Amah in the said Freeholds, Leaseholds and other property and the said S. Packirisawmy Pillay for himself and his heirs, executors and administrators doth hereby covenant with his aforesaid seven sons that he or they will on his daughter attaining her majority get her to confirm the grant, assignment and transfer of her undivided interest in the aforesaid property by these presents made or intended to be made by him on her behalf and that both he and she will at all times hereafter at the request and cost of the said seven sons or the survivors of them or other their representatives or assigns will do or cause to be done or executed all such acts deeds and things whatsoever for further and more perfectly assuring them as joint undivided owners of the said property and that failing to get such confirmation he the said S. Packirisawmy Pillay and his heirs, executors and administrators will indemnify his said sons against any claim she may prefer or cause to be preferred for a share in the same. And they the said seven sons do hereby for themselves and the survivors of them or other their representatives covenant with the said S. Packirisawmy Pillay (1) that they now have and will make no claim to any share in the said sum of twenty-five thousand rupees or in the four thousand rupees worth of jewellery before mentioned and that he the said S. Packirisawmy Pillay may draw and receive and dispose of the same as he thinks fit (2) that they will pay off the debts amounting to one lac of rupees set out in the fourth schedule hereunder written (3) that they will continue as between themselves and in regard to the property set out in the first and third schedules an undivided family the two eldest sons for the time being to be Managers and that if any one of them shall desire to separate from such undivided family he shall only do so on the condition that he will accept from his coparceners for his undivided share the sum of Rupees five thousand only.

IN WITNESS WHEREOF the said parties to these presents have hereunto set their hands at Moulmein on the day and year hereinbefore written."

The indenture was executed by the five sons who then were major, for themselves and the two minor sons. On the 18th December 1904 S. Packirisawmy

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Pillay died. The debts were duly paid by the sons, and from 1904 to 1913 the property was managed by the two elder sons on behalf of them all.

In 1913 the two minor sons, who had then attained their majority, filed a suit (No. 25 of 1913) in the District Court of Amherst for partition of the estate, and on the 25th February 1914 a decree was passed in favour of the plaintiffs for Rs. 5,000 each. It appears, however, that in fact after the decree the seven brothers remained joint and undivided.

In August 1915 the plaintiff, who is the legitimate son of P. Doraisawmy Pillay, one of the seven illegitimate sons, was conceived. On the 12th November 1915 the seven sons agreed to partition the estate, and submitted their differences to arbitration. On the 10th December an award was made pursuant to the submission ; and on the 15th December 1915 in Suit No. 147 of 1915 a decree was passed embodying the terms of the award, and effecting a partition of the property between the seven sons. Both the submission to arbitration and the award were signed by all the seven sons, and under the award the sons consented to the cancellation of the indenture of the 9th December 1904.

On the 15th May 1916 the plaintiff was born. On the 1st June 1926 the father of the plaintiff, P. Doraisawmy Pillay, notwithstanding that he had been a consenting party to the submission and the award, brought a suit in the District Court of Amherst (No. 35 of 1926), in which he sought *inter alia* to set aside the award and the decree embodying its terms on the ground of fraud. On the 10th December 1926 the suit was dismissed ; and on the 21st December 1927 the appeal therefrom was also dismissed.

On the 17th June 1929 the plaintiff filed the present suit *in forma pauperis*, impleading as defendants his father and the two other surviving sons of

S. Packirisawmy Pillay, and the widows of three of the other sons who had died, one son having died without leaving any heir. The fifth defendant Sundarath Ammal one of the widows alone contested the suit. The plaintiff *inter alia* prayed for a declaration that the indenture of the 9th December 1904 was binding upon the parties thereto, and that they had no right to revoke the same or partition the properties therein referred to. He further claimed that the award was bad in law, and in any event that he was entitled to a share of the properties thereby partitioned as coparcener with his father and the other sons of S. Packirisawmy Pillay. The learned District Judge dismissed the suit.

The question that falls for determination is whether, applying the principles of law that I have stated to the facts of the present case, the appellant is entitled to succeed.

Now, it was not pretended or contended that the plaintiff obtained any right to or interest in the property otherwise than as a coparcener in a joint Hindu family consisting of himself and the seven illegitimate sons of S. Packirisawmy Pillay.

Further, it was the common case of all parties to the appeal that neither the plaintiff nor any of the seven sons of S. Packirisawmy Pillay were coparceners in a joint Hindu family with S. Packirisawmy Pillay during his lifetime.

It was also common ground at the trial that the rights of the parties depended upon the terms of the indenture of 9th December 1904. Obviously that must be so, inasmuch as S. Packirisawmy Pillay in his lifetime was at liberty to dispose of his separate property as he chose, and in fact transferred and divided it among his sons, his daughter and himself on the terms set out in the indenture.

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It follows, therefore, that unless the plaintiff can establish that under the indenture of the 9th December 1904 S. Packirisawmy Pillay transferred *inter vivos* by way of gift to his seven sons property which they would have inherited as coparceners *inter se* on S. Packirisawmy Pillay's death without having exercised his unfettered right of disposal of the property during his lifetime, the suit must fail. I am clearly of opinion that neither in form nor in substance did the indenture of the 9th December 1904 effect a transfer of the property of S. Packirisawmy Pillay to his sons by way of gift. In form the indenture plainly was a contract whereby *inter alia* the father for valuable consideration transferred his estate and interest in his self-acquired property, other than that retained by his daughter and himself, to his sons jointly as absolute owners thereof. In the indenture it is stated that S. Packirisawmy Pillay was anxious to sever the coparcenery so far as it subsisted between them (that is S. Packirisawmy Pillay and his daughter and his said seven sons) and that his said sons were ready and willing to effect such severance. It was further stated therein that it was agreed between the father and his seven sons that they should partition the property; that the father should retain for himself and his daughter Rs. 25,000 and Rs. 4,000 worth of jewellery, and that the seven sons should take and hold the property set out in Schedules I and III (A, B and C) as their joint property as an "undivided family on their own and joint account". In the operative part of the indenture, S. Packirisawmy Pillay "according to his and his daughter's share and interest in the freehold and leasehold hereditaments and other property hereby intended to be respectively granted, assigned and transferred, doth, on behalf of himself and his said

daughter, grant, assign and transfer unto and to his said seven sons collectively and their respective heirs, executors, administrators and assigns as the case may require all and singular the freeholds and leaseholds and other property described and comprised in the said Schedules I and III (A, B and C) to have and to hold the said freeholds and to hold the said leaseholds unto the use, as regards freeholds, of his seven sons, their heirs and assigns and, as regards the leaseholds and other property set out in the said schedules unto his said seven sons, their executors, administrators and assigns." S. Packirisawmy Pillay further covenanted to do or cause to be done or executed all such acts, deeds and things whatsoever for further and more perfectly assuring them as joint undivided owners of the said property. In consideration of the transfer of the said property to them the seven sons personally covenanted that they would make no claim upon the property retained by their father and his daughter and would pay the debts amounting to a lakh of rupees as provided in the deed, and further that they would continue as between themselves and in regard to the property set out in the first and third schedules as an undivided family, the two eldest sons for the time being to be managers; and that if any one of them should desire to separate from such undivided family he should only do so on the condition that he would accept from his coparceners for his undivided share the sum of Rupees five thousand only.

In my opinion the indenture embodied and gave effect to a family arrangement whereby in consideration *inter alia* of the sons foregoing any claim that they might have had to their father's property, and undertaking a personal obligation jointly and severally to pay their father's debts amounting to a lakh of

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rupees, the father effected an out and out transfer of the property to the seven sons as joint owners thereof.

Having regard to the terms of the indenture I find it difficult to understand how it can reasonably be contended that the indenture of the 9th December 1904 was or amounted to a gift by S. Packirisawmy Pillay of the property therein transferred to the sons, or that by reason of the terms thereof the seven sons after S. Packirisawmy Pillay's death held the property as coparceners in a joint Hindu family. A coparcenery as I have said cannot be created by contract, and the terms of the third covenant by the sons are inconsistent with the terms and conditions under which coparceners hold property in a joint Hindu family. In my opinion after the death of the father it was competent for the sons to whom the property had been transferred jointly by mutual consent to partition or divide among themselves the property transferred to them under the indenture. I am further of opinion that there is no ground for contending that the contract was entered into by the parties thereto for the benefit of or as trustees for the plaintiff, or that the plaintiff is entitled to enforce it. The fact that the seven sons undertook a personal obligation to discharge the debts of the father, in my opinion, is fatal to any such contention. I am of opinion that the reason for launching the present suit was that the plaintiff's father having failed to obtain a decree setting aside the award, determined to make a further attempt in this way to obtain more than the share that he was entitled to under the award to which he had submitted and given his written consent. The attempt fails, and the appeal will be dismissed with costs. The appellant will pay the Court fees as provided in the Code of Civil Procedure. We certify for two counsel.

DAS, J.—I concur.