admitted they could not affect the result. Therefore the application for additional evidence must be rejected.

As regards costs, we think that under the circumstances each party should bear his own costs throughout.

Decree varied.

J. G. R.

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PATDAYA v. THE SECRETARY OF STATE FOR INDIA.

FULL BENCH.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, Mr. Justice Crump and Mr. Justice Coyajee.

KESHAVLAL PUNJALAL SHETH (ORIGINAL APPLICANT), APPELLANT *v.* THE COLLECTOR OF AHMEDABAD (ORIGINAL OPPONENT), RESPONDENT*.

1923. *September* 19.

Court-Fees Act (VII of 1870), section 19D, Schedule III—Property belonging to joint Hindu family—Property standing in father's name—Partition among sons after father's death—Son applying for letters of administration to property falling in his share—Exemption from Court-fees.

A Hindu father and his two sons lived together in a joint family. A portion of the family property consisting of shares stood in the name of the father. The two sons separated after their father's death. Each of the sons applied separately for limited letters of administration in respect of the shares that came to him on partition. The Court granted the letters applied for but levied full Court-fees over them. On appeal:—

Held, that no Court-fees should be levied on the limited letters of administration sought by the son as to the shares belonging to the joint family that came to him on partition with his brother.

Collector of Kaira v. *Chunilal*[1], followed.

FIRST appeal from the decision of M. I. Kadri Assistant Judge of Ahmedabad.

Letters of administration.

Punjalal and his two sons, Keshavlal and Kodarlal, lived together in a joint family. Shares in joint stock

* First Appeal No. 170 of 1922.

(1) (1904) 29 Bom. 161.

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companies formed a part of the joint property. Punjalal died in 1916. In 1920, Keshavlal and Kodarlal separated and partitioned the family property inclusive of the shares.

Keshavlal and Kodarlal applied separately for limited letters of administration for the shares that came to them on partition.

The lower Court ordered issue of the letters, but levied full Court-fees on the letters of administration.

The applicant Keshavlal appealed to the High Court.

At first the appeal was heard by Shah Acting C. J. and Coyajee J.; but before the arguments were fully heard, it became clear that the appeal involved a reconsideration of the *ratio decidendi* in the case of *Collector of Kaira* v. *Chunilal*[1]. The Court therefore ordered the appeal to be heard by a Bench of three Judges.

G. N. Thakor, with *R. J. Thakor*, for the appellants:—The point is covered by *Collector of Kaira* v. *Chunilal*[1]. The lower Court has erred in not following the case.

Kanga, Advocate-General, with *S. S. Patkar*, Government Pleader, for the respondent:—The case of *Collector of Kaira* v. *Chunilal*[1] is not correctly decided. The whole judgment is devoted to showing that the case of *Collector of Ahmedabad* v. *Savchand*[2] was wrongly decided. It is only in the last four lines that the view of the Calcutta High Court in *In the goods of Pokurmull Augurwallah*[3] is indicated and followed without any discussion as regards the character of the property as trust property. Besides the authority of *Collector of Kaira* v. *Chunilal*[1] is considerably shaken by the observations of Beaman and Hayward JJ. in *Kashinath Parsharam* v. *Gouravabai*[4].

(1) (1904) 29 Bom. 161.
(2) (1902) 27 Bom. 140.
(3) (1896) 23 Cal. 980.
(4) (1914) 39 Bom. 245.

The case of *In the goods of Pokurmull Augurwallah*[1], on which *Collector of Kaira* v. *Chunilal*[2] solely rests, is not backed up by any reasoning and takes its stand upon a report of the Taxing Officer, Mr. Belchambers. It makes no mention of the two earlier Calcutta cases, viz., *In the goods of Brindabun Ghose*[3] and *In the Goods of Froeschman*[4], where the share of the deceased co-parcener was assessed to duty.

Under the Court-Fees Act, section 19D, if a person is to apply for letters of administration or probate for property which is held in trust, he need not pay Court-fees in respect of it. Section 19 I provides for payment of Court-fees in respect of probates and letters of administration, and refers to Schedule III, in which annexure B refers to items exempt from payment of duty. One of such items is "Property held in trust not beneficially or with general power to confer a beneficial interest." Section 37 of the Probate and Administration Act enables grant of letters of administration limited to trust property. Thus, it is clear that if the deceased has the slightest beneficial interest in the property, the exemption is gone.

In property belonging to a joint Hindu family but standing in the name of one co-parcener only, all the members of the co-parcenery have interest in every part of it. No one can say that he owns a particular portion of it. Each co-parcener is exempted to a joint benefit on every part of the undivided estate: *Ramchandra* v. *Damodhar*[5]. Such a property cannot be said to be trust property at all; much less can it be said to be "property held in trust not beneficially". The interest which one particular co-parcener, e. g., father, has in a Mitakshara family, is something more than that. He

(1) (1896) 23 Cal. 980.
(2) (1904) 29 Bom. 161.
(3) (1873) 11 Beng. L. R. App. 39.
(4) (1883) 20 Cal. 575.
(5) (1895) 20 Bom. 467.

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certainly has beneficial interest in his own share; to that extent at least the exemption granted by Schedule III is gone. On his death his share descends to other co-parceners. In any event such a share should be made amenable to Court-fees: see *In the matter of Desu Manavala Chetty*[1].

G. N. Thakor:—The case of *In the goods of Brindabun Ghose*[2] is not against me; while the cases of *In the Goods of Froeschman*[3] and *In the goods of Pokurmull Augurwallah*[4] are in my favour. *Brindabun's case*[2] appears to be a Dayabhaga case. Even if it were under the Mitakshara there is no decision on the point arising here. The question raised was whether the surviving brother's share should be taxed or not. There was no question whether the whole should be taxed. The decision only says that the surviving brother's share should not be taxed: it does not go further and say that the deceased brother's share should be taxed. *Froeschman's case*[3] is entirely in my favour. It says that whatever passes by survivorship should not be taxed. *Pokurmull's case*[4] makes the point clear beyond any doubt. *Pokurmull's case*[4] is followed in *Collector of Kaira* v. *Chunilal*[5]. The judgment in the latter deals at length with the policy of the financial department as evidenced in its resolutions. It also takes note of the practice existing on the Original Side of our Court. Even *Kashinath Parsharam's case*[6] is not an authority against me.

The Court-Fees Act was recently amended by the Bombay Legislature; but no amendment was made then to negative the effect of the decision in *Collector of Kaira* v. *Chunilal*[5].

The reasoning in the Madras case is not clear.

(1) (1909) 33 Mad. 93.
(2) (1873) 11 Beng. L. B. App. 39.
(3) (1883) 20 Cal. 575.
(4) (1896) 23 Cal. 980.
(5) (1904) 29 Bom. 161.
(6) (1914) 39 Bom. 245

In the case of joint family property it is not open to any co-parcener to say that any portion of it is his own property. The only beneficiary interest that he has during his life-time is the right to partition. The whole co-parcenary is the owner of the whole property. No one co-parcener can say that any portion of it is his own. A co-parcener can alienate his share in it; but all that the alienee gets is a right to partition the property. A co-parcener cannot deal with the property either by gift or by will. No co-parcener has a fixed share in it. His share is liable to be decreased by the birth of more co-parceners; or increased by the death of existing ones. When one co-parcener dies, it is not correct to say that his share devolves on the remaining co-parceners. The whole co-parcenary remains, as it ever was, the joint owner of the property.

Under section 19D of the Court-Fees Act if a person is wholly or partially a trustee with regard to the property one can obtain probate or letters of administration without payment of Court-fees. In the case of a joint Hindu family the father is partially a trustee with regard to the property: letters of administration therefore to his estate are entitled to exemption. He is also wholly a trustee for the whole co-parcenary. At the time of his death, he has no beneficial interest left in the property. The whole interest passes to the survivors. Such an interest is excluded by section 4 of the Probate and Administration Act, 1881. The Schedule should not be allowed to control the plain words of section 19D of the Court-Fees Act.

Where there is a life interest and a person has a beneficial interest on the cessation of the life interest, he claims in his own interest when such life interest ceases and if he applies for letters of administration on

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such death he is exempt from payment of Court-fees : see *In the Goods of Joymoney Dossee.*[1]

Kanga. :—The Schedule can be discarded only if it is inconsistent with the section. It is brought in aid to construe section 19 I. If you can reconcile the two, the Schedule is a guide to the construction of the section.

C. A. V.

SHAH, Ag. C. J. :—This appeal came on for hearing before my brother Coyajee and myself ; but as we were invited to reconsider the decision in *The Collector of Kaira* v. *Chunilal*[2] it was ordered to be heard by this Bench. We have now heard the appeal and the principal point argued is whether the said ruling is to be followed or not.

The appeal arises in this way :—

Sheth Punjalal Amritlal of Prantij died on May 15, 1916, leaving two sons, Keshavlal and Kodarlal. During his life-time they formed a joint family. On his death the joint estate survived to his two sons. The estate included certain shares in various companies registered under the Indian Companies Act, which were in the name of Punjalal. The sons subsequently effected a partition of the whole estate in 1920, and as a result divided among other things the beneficial interest in the shares. They applied for limited letters of administration to the estate of their father relating to the said shares, as without such letters they could not be accepted as his legal representatives in respect of these shares. There was no dispute about the right to the letters of administration but there was a dispute as to their liability to pay the Court-fees on the value of the shares.

[1] (1875) 14 Beng. L. R. 184. [2] (1904) 29 Bom. 161.

The petitioners relied upon the decision in *The Collector of Kaira* v. *Chunilal*[1] as entitling them to exemption from payment under the Court-Fees Act. On behalf of the Collector of Ahmedabad it was contended that the ruling did not apply as at the date of the application the property was not joint but divided and severally owned by the two petitioners. The learned Assistant Judge accepted the contention of the Government Pleader and while granting the limited letters of administration as prayed directed Court-fees to be paid on the valuation of the shares as made by the Government Pleader. The petitioners have appealed on the ground that the lower Court has erred in not applying the decision in *Collector of Kaira* v. *Chunilal*[1], as the material date is the date of the Punjalal's death and not the date of application. On behalf of the respondent (the Collector of Ahmedabad), the learned Advocate-General has not seriously contested the correctness of the position thus taken up by the petitioners; but he has sought to support the order of the lower Court principally on the ground that section 19D of the Court-Fees Act has not been correctly interpreted by this Court in the said decision. In support of this contention, he has relied upon the observations in *Kashinath Parsharam* v. *Gouravabai*[2] and the words of section 19D and Schedule III of the Court Fees Act.

As regards the ground upon which the lower Court has based its decision, it is clear that it cannot be supported and the learned Advocate-General has rightly refrained from pressing it. The letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death. Section 14 of the Probate and Administration Act is clear on this

(1) (1904) 29 Bom. 161.

(2) (1914) 39 Bom. 245.

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point. The question is whether at the moment after his death the property was joint family property and not whether it was so at the date of the application. It was not contended in the lower Court, and it is not contended before us, that at the date of Punjalal's death it was not part of the joint family property. The allegation of the petitioners on this point was not challenged.

This brings me to the real point of importance raised on behalf of the respondent. The point is two-fold: first, it is urged that Punjalal did not hold the shares wholly or partially on trust within the meaning of section 19D and that he was beneficially interested therein in his own right though other members of the joint family were equally interested and though on his death the whole beneficial interest survived to the two sons. Reliance is placed upon the words used in Schedule III of the Act: secondly, it is urged that even if Punjalal was not wholly interested in the shares at least to the extent of his share he was interested and the Court-fees ought to be payable in respect of one-third of the property for which the letters of administration are sought.

In support of the first branch of the argument the learned Advocate-General relies upon the observations in *Kashinath Parsharam* v. *Gouravabai*[1]. In respect of the second branch of the argument he relies upon the case of *In the Goods of Brindabun Ghose*[2] and *In the matter of Desu Manavala Chetty*.[3]

By way of answer to these contentions the learned counsel for the appellants contends that the words of section 19D are comprehensive enough to include the case of a joint member of a family holding the property in his name who has a partial interest in the property during his life-time, which (interest) ceases altogether

(1) (1914) 39 Bom. 245. (2) (1873) 11 Beng. L.R., App. 39.
(3) (1909) 33 Mad. 93.

on his death and survives to the survivors, that there is no conflict between the wording of the Schedule and the wording of the section and that the cases of *In the Goods of Pokurmull Augurwallah*[1] and *The Collector of Kaira* v. *Chunilal*[2] are rightly decided. Further, he relies upon the observations of Hayward J. in *Kashinath Parsharam* v. *Gouravabai*[3] at p. 254 of the report as really supporting his contention. Further, it is urged that as this section which was enacted in 1875 has been interpreted in favour of the subject in a particular manner, as the practice in this Court has been uniform as stated in *The Collector of Kaira* v. *Chunilal*[2], and as the Legislature has not considered it right to amend the section in the sense now contended for, it is not right that a narrower interpretation should be placed upon the exemption and a departure made from the established practice extending over a number of years.

We have considered the arguments urged on both sides, and my view is that section 19D has been correctly interpreted by this Court in *The Collector of Kaira* v. *Chunilal*[2] and that even if there be a doubt as to the true meaning of the expression "property whereof or whereto the deceased was possessed or entitled either wholly or partially as a trustee" or the expression "property held in trust not beneficially or with a general power to confer a beneficial interest" the interpretation accepted in Calcutta so far back as 1896 and in Bombay so far back as 1904 and acquiesced in by the Legislature should now be accepted as representing the true scope of the said expressions. First as regards the meaning of the expression in its application to joint family property with the incident of survivorship governed by the Mitakshara and the Mayukha in this Presidency it must be remembered that while the holder, a member of the family, in one sense is

(1) (1896) 23 Cal. 980. (2) (1904) 29 Bom. 161.
(3) (1914) 39 Bom. 245.

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beneficially interested in the whole, the other members of the co-parcenary are also beneficially interested in the whole and the beneficial interest of the holder is limited by the extent of the interest of other members. Further, that interest disappears altogether on his death ; and the survivors become the sole beneficiaries in the estate which stands in the name of the deceased person. On his death what is called his estate is no estate of his ; and the legal title which still continues in the dead man is really the title of a man, whose beneficial interest in the property on his death is nothing. As regards property of this character it could properly be said that the deceased died possessed of it or was entitled to it either wholly or partially as a trustee within the meaning of section 19D. I do not think that the words used in the Schedule, viz., "property held in trust not beneficially or with general power to confer a beneficial interest" conflict with this view. I do not say that the point is free from difficulty. But if the rule of construction to be applied to an enactment of this nature is, as I think it should be, that a liberal construction ought to be given to words of exception confining the operation of the duty, I think that the words have been rightly construed to cover a case of joint family property held by a co-parcener for the joint benefit of himself and others and in which his beneficial interest ceases on his death, so that at the date of his death his legal title or possession is without any beneficial interest therein. He would have no power on his death to confer a beneficial interest as he would have for instance in the case of his self-acquired property.

I have so far considered the point apart from authority. But when I turn to the decided cases, the weight of authority seems to be in support of this view. In Bengal the practice has been in accordance

with the decision of *In the Goods of Polkurmull Augurwallah*[1] at least since the date of that decision. In Bombay the question was fully examined by Jenkins C. J. in 1904, and the conclusion with the reasons therefor has been stated in the case of *The Collector of Kaira* v. *Chunilal*[2]. The practice on the Original Side of this Court has been mentioned in that case as being of long standing; and in this Presidency there has been no contrary decision. The observations in *Kashinath Parsharam* v. *Gouravabai*[3] are no doubt against this view. I agree that Beaman J.'s view is in conflict with the opinion expressed by Jenkins C. J. But I doubt whether the observations of Hayward J. can be read in that sense: for at p. 254 of the report he observes as follows:—

"The case might, no doubt, have been different if the estate specified had been not the whole joint property but only a limited interest in the joint property—if, for instance, the estate specified had excluded the beneficial interests of the members of the family in the property and had strictly been limited to the legal right to parade as proprietor under such statutory provisions as sections 22 and 23 of the Presidency Banks Act, 1876, or sections 30 (2), 33 and clauses 21 and 22 of Table A of the 1st Schedule of the Companies Act, 1913. The possibility of such a case would appear from the remarks in the case of *Bank of Bombay* v. *Ambalal Sarabhai*[4]. That would perhaps have been the appropriate manner of meeting the difficulties presented by such statutory provisions as those of the Presidency Banks and Companies Acts".

When the present application is looked at in its true legal bearing in substance it is really an application of the nature referred to by Hayward J. and it is not unlikely that the remarks in *Bank of Bombay* v. *Ambalal Sarabhai*[4], referred to by Hayward J., were present to the mind of the learned Chief Justice when he decided the later case now under consideration. With great respect for the contrary opinion expressed

(1) (1896) 23 Cal. 980.
(2) (1904) 29 Bom. 161.
(3) (1911) 39 Bom. 245.
(4) (1900) 24 Bom. 350 at p. 358.

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in *Kashinath's case*[1], I think that the decision in *The Collector of Kaira* v. *Chunilal*[2] is right.

The view of the Madras High Court proceeds on somewhat different lines; and the learned Advocate-General has pressed for that view in the alternative. I have considered the *ratio decidendi* in that case. But I am unable to hold that the fact that a joint sharer has power to alienate his share for consideration in this Presidency could alter the character of the property. If a sharer simply alienates his share for consideration and dies the next day without effecting partition, the purchaser would not get his share, as it would cease to exist before it is seized. He cannot make a gift of his undivided share; and he cannot dispose of it by will I am unable to hold that such limited power of dealing with the property can make any difference in the character of the deceased's title to or possession of the property at the time of his death. With great respect for the learned Judges I am unable to accept the *ratio decidendi* in that case.

Lastly, even assuming that the scope of the expression used in section 19D and the Schedule is not clear, it cannot be said that it is so clear the other way that we should now decide to depart from the practice, which has been uniformly followed in this Presidency for so many years and which has the sanction of judicial interpretation put upon the Court-Fees Act so far back as 1904.

During the interval the Legislature has not indicated that that is not consistent with the true intention of the Legislature. Having regard to the history of the legislation on this point and its application for many years, I do not think that the view taken in *The Collector of Kaira* v. *Chunilal*[2] can be held to be wrong.

[1] (1914) 39 Bom. 245. [2] (1904) 29 Bom. 161.

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I would, therefore, allow the appeal and modify the decree of the lower Court by deleting the directions as to payment of Court-fees. The appellants to have their costs throughout. The amount, if paid, to be refunded.

CRUMP, J. :—I agree.

COYAJEE, J. :—I agree.

Appeal allowed.

R. R.

APPELLATE CIVIL.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Kemp.

BHAGCHAND DAGADUSA v. THE SECRETARY OF STATE FOR INDIA*.

1923.

August 15.

Bombay District Police Act (Bom. Act IV of 1890), sections 25, 25A, 26, 79, 80, 31†—Bombay General Clauses Act (Bom. Act I of 1904), section 21—Additional Police force—Levy of charges for the force—Riot—Damage—Compensation for damage—Proposal to levy charges and compensation from one class of people—Subsequent variation and levy from another class of people—Court—Jurisdiction—Civil Procedure Code (Act V of 1908), section 80—Suit against Government—Prayer for injunction—Notice of suit.

† The sections run as under :—

25. (1) Government may, from time to time, by notification, direct the employment of additional police for such period as it shall think fit in any local area which shall appear to it to be in a disturbed or dangerous state, or in which the conduct of the inhabitants or of any particular section of the inhabitants shall, in its opinion, render it expedient temporarily to increase the strength of the police.

(2) The cost of such additional police shall, if Government so direct, be either in whole or in part defrayed by a tax imposed on the persons hereinbelow mentioned, or by a rate assessed on the property of such persons, or both by a tax and by a rate so imposed and assessed, and charged :

(*a*) either generally on all persons who are inhabitants of the local area to which such notification applies ; or

* First Appeal No. 64 of 1923, from the decision of M. S. Advani, District Judge of Nasik, in Suit No. 3 of 1922.