APPELLATE JURISDICTION. (a)

1863.
March 30.
S. A No 100
of 1862.

Special Appeal No. 100 *of* 1862.

MUTTUSVÁMI GAUNDAN and another.....*Appellant.*
SUBBIRAMANIYA GAUNDAN and others.....*Respondents.*

While the members of a Hindu family enjoy in common undivided property, money expended in its improvement or repair is considered as spent on behalf of all the members alike, and all have the benefit of the outlay when a division takes place.

There is no rule of law precluding one member of an undivided Hindu family though living together, from entering into an agreement with his co-parceners in respect of the expenditure on family property and re-payment of self-acquired funds ; and such an agreement is rendered more reasonable and probable where portions of the family-property are occupied and enjoyed by each of the members living separately.

THIS was a special appeal from the decision of Shaikh 'Abd-ul Rahiman, the Principal Sadr Amin of Coimbatore, in Appeal Suit No. 247 of 1861, reversing the decree of S. K. Visvanáda, the District Munsif of Vadamálpettai in Original Suit No. 739 of 1859.

Sadgopacharlu for the special appellants, the defendants.

Branson for the special respondents, the defendants.

The facts appear from the following

JUDGMENT :—This suit was for a division and share of lands constituting a portion of the family-property of the parties. It was alleged in the plaint that the plaintiffs and defendants, who are all members of an undivided family, occupy separate house and separate portions of the lands composing the family estate ; and that the plaintiffs are entitled to a moiety of the lands in possession of the defendants, for the recovery of which they accordingly instituted this suit, as also for an equal division of the house now occupied by the defendants.

The defendants pleaded that by an agreement executed in 1858 by the plaintiffs, it was stipulated between the parties that no division of the lands should take place until the

(a) Present : Scotland, C. J. and Frere J.

1863. *March* 30. *S. A. No.* 100 *of* 1862.

plaintiffs had reimbursed to the defendants the value of the improvements made by the defendant's father, Vadivelappa-gaundan upon that part of the lands which was in their occupation, and that the value of these improvements should be enquired into and adjusted by arbitration. The defendants therefore urged that the plaintiffs had failed to act up to two conditions of this agreement, and that they had consequently no cause of action.

The District Munsif observed that this agreement, which was filed by the defendants as No. 1 in the present case, was admitted by the plaintiffs to be a genuine instrument, and, considering the arguments of the defendants to be founded on reason and justice, he dismissed the claim of the plaintiffs with costs. This judgment was, however, reversed in appeal by the Principal Sadr Amin, who decreed for the plaintiffs, on the ground that the family were allowed to be undivided, and that a charge incurred by one member must therefore be held to have been on behalf of the entire family, a rule which barred any claim for re-payment to that individual member only ; and consequently that the agreement was not binding upon the plaintiffs. The principal Sadr Amin was also of opinion that the defendants had failed to prove that the house was their own self-acquired property.

The defendants preferred a special appeal against this decision, and we are of opinion that the decree of the Principal Sadr Amin must be reversed.

The members of this family, though undivided in property, have, it appears, lived apart and occupied and enjoyed separate portions of the land in question and not the whole of it in common ; and the plaintiffs are themselves parties to the agreement (No. 1) relied upon by the defendants, and must be taken to have entered into it with a full knowledge of its meaning and purpose. We have not before the Court the precise grounds upon which the agreement was come to ; but it seems to have resulted from a mediation between the parties ; and under the circumstances here, it is easy to suppose a state of things which would make such an agreement reasonable ; and effect ought to be given to it as against the plaintiffs (parties to it) unless there is some rule of law which affects its validity. As a general rule, no

1863.
March 30.
S. A. *No.* 100 *of* 1862.

doubt, where undivided property is being enjoyed in common by the members of a Hindu family, money expended in the improvement of repair of the property, is considered as spent on behalf and for the advantage of all the members alike, and all have the benefit of the outlay when a division takes place. But there is no rule of law, that we are aware of, which precludes one member of an undivided Hindu family, though living together, from entering into an agreement with his co-parceners in respect of the expenditure upon the family property and re-payment of self-acquired funds ; and such an agreement is rendered more reasonable and probable, where portions of the family property are occupied and enjoyed, as in this case, by each of the members living separately. There is therefore, we think, nothing illegal or unreasonable in the agreement by which it was in effect stipulated that prior to division of the estate the defendants should be reimbursed those sums which their father had laid out from his own private means, upon the lands in his separate possession, and as their own contract, we must hold it to be binding upon the plaintiffs, and consequently the present suit, in which the plaintiffs set at nought the agreement and seek a division of the property contrary to its terms, cannot, we think, be maintained.

With reference to the house in question, it is not necessary for us to do more than observe that having failed in respect of their claim to a division of the other property, the plaintiffs cannot now legally enforce a division of the house alone.

Our judgment therefore is, that the decree of the Principal Sadr Amin be reversed and the claim of the plaintiffs dismissed with costs of suit. The plaintiffs, however, will not be precluded from suing hereafter for division of the family-property, in accordance with the terms of their agreement above mentioned.

NOTE.—See *Nub Koomar Chowdry* v. *Jye Deo Nundee*, 2 S. D. A. Rep. 247 : 1 Morl. Dig. 606 : 1 Strange, H. L. 199 : 2 Ibid. 336, 343, 346 : 1 Coleb. Dig. 283 : *Golucknauth Bose* v. *Rajkissen Bose* Fult. 401 : *Special Appeal* No. 37 of 1860, M. S. D. 1860, p. 16.