Privy Council Appeal No. 58 *of* 1920.

Lakkimsetti Basavalingam and others - - - - *Appellants*

v.

Lakkimsetti Paridesayya and another - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH APRIL, 1922.

Present at the Hearing:

LORD ATKINSON.
LORD PARMOOR.
LORD CARSON.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD ATKINSON.]

Their Lordships, in the course of the arguments which have been addressed to them on behalf of the first defendant, have looked very carefully into the different matters which were dealt with, and they are of opinion that there is nothing to induce the Board to come to the conclusion that the decree of the High Court was wrong.

The first defendant was the eldest son of one Lakkimsetti Veerabhadrudu and brother of the two plaintiffs. Lakkimsetti carried on business as a merchant, supplemented with the business, which most successful people in India seem to resort to, of lending money. He died. The first defendant was the manager of the business, who ought to have had all the documents. It is undoubted that there was partition between the plaintiffs, the two younger brothers, and the first defendant, the manager of the business. Two partitions were, in fact, made—the first in the month of May, 1910, and the second in the month of June, 1912. On the first partition certain outstanding assets, which

were securities for money, either in the shape of promissory notes or mortgages, were assigned to the plaintiffs as their shares. There was a further partition in June, when other assets were assigned to them as their shares. Those assets which were assigned on the first occasion are proved to be the items contained in Schedules A and B attached to the plaint; those which were assigned to them on the second occasion are contained in the Schedules C and D attached to the plaint.

The Subordinate Judge came to the conclusion that the partition was not formal and complete, and to the further conclusion, which their Lordships do not see any evidence to support, that the parties would prefer to have a general formal partition. The High Court have come to the conclusion, based to a great extent upon the evidence of the plaintiffs, and disregarding the evidence of the first defendant, whom nobody believed, that the items set out in these four schedules were given to the plaintiffs upon these two partitions. The High Court have accordingly granted an injunction to restrain the first defendant from interfering in any way with the securities which were so given to the plaintiffs on the partition, and as to the remainder of the decree appealed from, directing that there should be a partition of all the outstanding part of the assets, they upheld the view of the Subordinate Judge.

Their Lordships do not see anything in the evidence to which they have been referred to induce them to think that this decision was wrong, and they will therefore humbly advise His Majesty that this appeal should be dismissed.

In the Privy Council.

LAKKIMSETTI BASAVALINGAM AND OTHERS

v.

LAKKIMSETTI PARIDESAYYA AND ANOTHER.

DELIVERED BY LORD ATKINSON.

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