

Privy Council Appeal No. 107 of 1933.

Purnananthachi - - - - - *Appellant*

v.

T. S. Gopaldaswami Odayar and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 27TH JULY, 1936.

Present at the Hearing:

LORD THANKERTON.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* SIR SHADI LAL.]

On the 25th November, 1895, the male descendants of one Sepperumal executed a deed, by which Balasubrahmanya, a grandson of Sepperumal, separated from the other members of the joint family on receiving one-fifth share of the family estate. In lieu of that share, the immoveable properties specified in list B mentioned in the third clause of the deed were allotted to him. There was admittedly a complete partition between him on the one side and the remaining members of the family on the other side, both in title to, and in physical possession of, the property. What was the status of the other members *inter se*? Did they constitute a coparcenary, or were they divided in estate? Now, clause 3 of the deed provided that they were to get the immoveable properties specified in list A and the outstandings detailed in list C. But these properties were not partitioned amongst them.

The rule is, however, well established that "when the members of an undivided family agree among themselves with regard to particular property, that it shall thenceforth be the subject of ownership, in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with; and in the estate each member has thenceforth a definite and certain share which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually severed and divided", *Appovier v. Rama Subba Aiyar* 11 Moo. Ind. App. 75, at p. 90.

The question is whether the share of each member was defined, though the property itself was not partitioned by metes and bounds. The determination of this question depends upon the interpretation to be placed on the terms of the document. Now the first clause of the deed not only gives a one-fifth share to Balasubrahmanya, but also states that the remaining four-fifths of the estate will be divided in five equal shares, each of which will be given to each of the five groups of the other members named therein. There can be no doubt that if it was intended that this clause should take effect immediately, there would be a division of their interests in the estate, and they can not be held to be coparceners subject to the rule of survivorship. The definition of their shares would effect a severance of the joint status, and convert the joint tenancy into a tenancy in common.

The deed, however, shows that Muthu, who was the senior member of the family, was anxious that there should be no disruption of the joint family, and that the members other than Balasubrahmanya should remain undivided during his lifetime. Muthu had no male issue, and, as stated in clause 6, he surrendered his own share in the estate. It was in compliance with his wishes that the clause states that the remaining members "shall, during the lifetime of said Muthu, live as members of one family," and that after his death partition shall be effected according to the shares mentioned in clause 1.

That there should be no immediate separation is emphasised by clause 8 which is in these terms:---

"So long as the sharers other than Balasubrahmanya Odayar of us remain joint without effecting a division according to the shares mentioned in paragraph 1 hereof, the family shall be treated as an ordinary undivided Hindu family subject to the law of survivorship."

This clause would undoubtedly be repugnant to clause 1, if the latter clause was intended at once to create a severance of the joint status. It is, therefore, necessary to ascertain the intention of the parties. The cardinal rule of interpretation for deeds as well as for other instruments is to gather the intention from the words of the document, and for that purpose the language of the entire deed should be taken into consideration. The interpretation to be adopted should be one which gives effect, if possible, to all the parts, and does not reject any of them.

Now, the appellant contends that all the members of the family became divided in status, but this construction would involve the rejection of the provision contained in clause 8 that the parties other than the outgoing member shall be treated as an ordinary undivided Hindu family subject to the rule of survivorship. It appears that this was the provision to which they attached importance.

The two clauses can be reconciled, if clause 8 takes effect at once and continues in operation until the division of the estate after the death of Muthu as stated in clause 6. When that division takes place, the parties would get the shares specified in the first clause. In other words, the operation of clause 1 was postponed until after the death of Muthu. A covenant of this character does not effect an immediate severance of status, but postpones it to a future time. Until that time comes, there is no separation of interests, and the members hold the estate as joint tenants. It is possible that during the interval some members may die without leaving any male issue, and in that case the stipulation as to the shares would not take effect, and the estate would be divided among a smaller number of coparceners, each of whom would get a larger amount than the stipulated share.

The result is that there is no separation of interests *in praesenti*; there is only a contract as to what is to be done in future, and such a contract is not invalid, though it may be rendered ineffective by change of circumstances.

A contract of this description, which is to operate in future, is rare and cannot control the provision which defines shares and thereby brings about a severance of status, unless it is expressed in clear and unambiguous terms. This test is satisfied in the present case.

Upon a consideration of all the terms of the document, their Lordships do not think that there is any adequate ground for dissenting from the conclusion reached by the learned judges of the High Court. They will, therefore, humbly advise His Majesty that this appeal should be dismissed with costs. The Official Receiver, West Tanjore, Respondent No. 9, is not entitled to the costs of the appeal, as obviously no relief was claimed against him by the appellant.

In the Privy Council.

PURNANANTHACHI

v.

T. S. GOPALASWAMI ODAYAR AND
OTHERS

DELIVERED BY SIR SHADI LAL

Printed by His Majesty's STATIONERY OFFICE PRESS
Pocock Street, S.E.1.

1936