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No. 17 of 1969

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

- 1. PANA LANA ANA RUNA ARUNASALAM CHETTIAR (deceased)
- 2. ANA RUNA LEYNA LAKSHMANAN CHETTIAR
- 3. MEENAKSHI ACHI (f) (Defendants) Appellants

- and -

- 10 ANA RUNA PANA LANA PALANIAPPA CHETTIAR
(Plaintiff) Respondent

CASE FOR THE APPELLANTS

Record

- 1. This is an Appeal from a Judgment and Order of the Federal Court of Malaysia (Azmi, C.J., Ong, F.J., and Suffian, F.J.) dated the 4th day of November, 1968, which dismissed an appeal by the Appellants from a Judgment and Order of the High Court in Malaya at Seremban (Ismail Khna, J.) dated the 21st day of March, 1968, whereby it was ordered that the First Appellant do file within two months of that date an account of his management of the PL.AR Firm (being part of the estate of a Joint Hindu Family) from the date of its commencement, i.e. from the 22nd August, 1926. pp.34-50
- 20 2. The only issue for determination in this Appeal is whether the said account must be filed from the date of the commencement of the firm, as found by the Courts below, or from the date of the decree of partition of the Hindu Joint Family, pp.25-30
- 30 3. In 1950, the Respondent instituted proceedings in the Subordinate Court of Devakottai in India claiming various reliefs one of which was for a direction that the movable and immovable properties belonging to the joint Hindu family consisting of himself and the Appellants be determined and divided into three shares and for the allotment of

<u>Record</u>	one share to him. Part of the said property was a firm known as PL.AR at Port Dickson, Malaya.	
pp .1-6	4. On the 2nd April, 1951, before judgment was given in the said Subordinate Court in India, the Respondent instituted Civil Suit No. 34 of 1951 in the High Court at Seremban, Malaya, claiming that the firm PL.AR at Port Dickson belonged to a joint Hindu family of which he was a co-parcener and praying for a decree of partition, the taking of accounts and other consequential reliefs.	10
pp .7-12	5. The Appellants' defence was that the said business of PL.AR and the assets thereof belong exclusively to the First Appellant and are his own separate property.	
p.61 11.8-11	6. On the 1st April, 1952, the Subordinate Court of Devakottai, India, held that the PL.AR business at Port Dickson belonged exclusively to the First Appellant and the Respondent had no interest therein.	
	7. The Respondent appealed against that Judgment to the High Court of Madras.	20
	8. On the 3rd December, 1954, on an application by way of Motion by the Appellants, the High Court at Seremban in Civil Suit No. 34 of 1951 (referred to in paragraph 4 above) made the following Order :-	
pp.13-14	"The Defendants by their counsel undertaking to abide in these proceedings by any final decree or decision of the Courts in India on the issue arising in Original Suit 70 of 1950 in the Court of the Subordinate Judge at Devakottai, South India as to whether the firm of "PL.AR" Port Dickson and the assets thereof belong to a Hindu Joint Family as alleged by the Defendants IT IS ORDERED that all further proceedings in this suit be stayed until after final determination or abandonment of the Plaintiff's appeal against the Judgment delivered on the 1st day of April, 1952, in the said Original Suit 70 of 1950 AND IT IS ORDERED that the costs of this application be costs in the cause."	30
p.61 pp.59-98	9. The High Court of Madras determined the issue regarding the PL.AR business in principle in favour of the Appellants. The Respondent however, appealed to the Supreme Court of India who finally	40

decided the issue in favour of the Respondent on the 25th October, 1963. The Court made the following Order:-

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10 "There will be a declaration that the PL.AR firm at Port Dickson and the assets thereof are the estate of the Joint Hindu family consisting of the plaintiff and the defendants, and the plaintiff is entitled to a third share therein. It is declared that division of the assets of the business will be made as agreed by the parties before the High Court at Seremban in Civil Suit No. 34 of 1951 as recorded in the decree in the order of that Court in December 3rd, 1954, and further before the High Court of Madras in C.M.P. No. 6218 of 1956. Appropriate directions to be obtained by the parties in Suit No. 34 of 1951 from the High Court at Seremban."

p.98,
11.3-18

20 10. In consequence of the above Judgment and Order of the Indian Supreme Court, an Order was made on the 11th July, 1964, by the High Court at Seremban in the following terms:-

pp.15-16

- 30 "1. That the PL.AR. Firm at Port Dickson and the assets thereof are the estate of the Joint Hindu Family consisting of the Plaintiff and the Defendants and the Plaintiff is entitled to one-third share therein;
2. that a partition of the properties of the said property be made;
3. that an account be taken of the movable and immovable properties of the said Joint Hindu Family and the accounts due to the Plaintiff from the Joint Hindu Family estate or from the first Defendant;
- 40 4. an inquiry be held to ascertain what part of the amount found due to the Plaintiff shall be paid from the said Joint Hindu Family estate and what part thereof shall be paid by the First Defendant;
5. that the Defendants do pay the Plaintiff costs of this suit."

Upon appeal from the said Order to the Federal Court of Malaysia, the Federal Court, on the 14th March, 1966, pp.23-24

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confirmed paragraphs 1 to 4 above and deleted paragraph 5 above and substituted the following:-

"(i) that the issues adjudicated upon by the Supreme Court of India in the Court of the Subordinate Judge, Devakottai Originating Summons No. 70 of 1950 be binding on the parties when taking accounts.

(ii) that the costs of this suit be taxed as between Solicitor and Client and be paid out of the assets of the estate." 10

11. The above Order omitted to state from what date the accounting was to commence.

12. In 1968, the Respondent made an application praying that the First Appellant do file an account of his management of the PL.AR Firm from the date of commencement within one month from the date of the order. On the 21st day of March, 1968, Ismail Khan, J. in the High Court of Seremban, adjudged and Ordered that the First Appellant do file an account of his management of the PL.AR Firm from the date of commencement within two months from the date of his Order. 20

pp.25-30

13. The Appellants, being dissatisfied with the said Order, appealed to the Federal Court of Malaysia, contending inter alia, that the Respondent was not entitled to have the accounts of the family property from the commencement of its inception (i.e. from the 22nd August, 1926) on the ground that the personal law of the family being the Mitakshara law, the Respondent as a member of a Joint Hindu Family cannot sue his manager (karta) for accounts for a period anterior to the date of the decree for partition, i.e. the 25th October, 1963. 30

pp.31-33

14. On the 4th day of November, 1968, the Federal Court, it is submitted wrongly, rejected the said submission, agreed with the finding of Ismail Khan, J. and dismissed the appeal with costs.

pp.34-47

15. On the 10th day of February, 1969, an Order was made granting the Appellants conditional leave to appeal to H.M. the Yang di-Pertuan Agong, and an Order granting Final Leave was made on the 9th June, 1969. 40

pp.51-52

16. The Appellants respectfully submit that this appeal should be allowed with costs and that the Order made by Ismail Khan, J. and confirmed on appeal

by the Federal Court should be set aside for the following amongst other

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R E A S O N S

1. BECAUSE under Mitakshara law, a member of a Joint Hindu Family cannot sue his Manager (karta) for accounts prior to the date of a decree of partition, i.e. prior to the 25th October, 1963.
- 10 2. BECAUSE under Mitakshara law, the manager (karta) of a Joint Hindu Family has such discretion in the management of its affairs that accounts prior to partition would serve no purpose.
3. BECAUSE prior to the 25th October, 1963, the Respondent had no status as a member of the Joint Hindu Family consisting of the PL.AR Firm.
- 20 4. BECAUSE the Courts of India had decreed a division of assets of the business as at 25th October, 1963, and had not adjudicated that the Respondent is entitled to an account of the PL.AR Firm from the date of its inception.
5. BECAUSE the Courts below wrongly held that the accounts books were with the First Appellant.
6. BECAUSE the judgments and reasons of Ismail Khan, J. and of the Federal Court are wrong.

T.O. KELLOCK

EUGENE COTRAN

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3. MEENAKSHI ACHI (f)
(Defendants) Appellants

- and -

ANA RUNA PANA LANA PALANIAPPA
CHETTIAR (Plaintiff) Respondent

CASE FOR THE APPELLANTS

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