Judgment no.20, 1974

20

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.17 of 1969

IN THE FEDERAL COURT OF MALAYSIA AT KUALA LUMPUR
(APPELLATE JURISDICTION)

B E T W E E N:

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

- and -

ANA RUNA LANA PALANIAPPA CHETTIAR (Plaintiff) Respondent

RECORD OF PROCEEDINGS

~~T. L.~~ WILSON ~~& CO.~~, FREEMAN
6/8 Westminster Palace Gardens,
London S.W.1. P IRL

Solicitors for the Appellants

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.17 of 1969

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- and -

ANA RUNA LANA PALANIAPPA CHETTIAR (Plaintiff) Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

INDEX OF REFERENCE (Contd.)

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

	Description of Document	Date
	In the High Court	
	Notice of Motion	21st October 1954
	Affidavit of Support	8th September 1953
	Affidavit in Support	21st October 1954
	Affidavit of A.R.P.L. Palanigppa Chettiar	27th November 1954
	Affifavit of P.L.A.A.Chettiar	2nd December 1954
	Notice of Motion	18th June 1964
	Affidavit in Support with Exhibits	16th June 1964
	Affidavit of P.L.A.R.Chettiar	9th July 1964
	Notes of Hearing	11th July 1964
	In the Federal Court	
	Notice of Appeal	20th July 1964

INDEX OF REFERENCE (COntd.)

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
In the Federal Court (Contd.)	
Memorandum of Appeal	26th August 1964
Chamber Summons	25th October 1967
Affidavit of A.R.P.L. Chettiar in Support with Exhibit	21st December 1967
Affidavit of M.S. Perumal	26th December 1967
Affidavit of A.R.P.L.Palaniappa Chettiar, with Exhibit	28th December 1967
Notes of Argument	4th January 1968
In the Federal Court	
Notices of Appeal	25th March 1968
Written Submissions for Defendants	20th September 1968
Notice of Motion	16th December 1968
Affidavit in Support with Exhibits	12th December 1968

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.17 of 1969

IN THE FEDERAL COURT OF MALAYSIA AT KUALA LUMPUR
(APPELLATE JURISDICTION)

B E T W E E N:-

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

- and -

ANA RUNA LANA PALANIAPPA CHETTIAR (Plaintiff) Respondent

10 RECORD OF PROCEEDINGS

No.1
PLAINT

In the High Court

No.1
Plaint
2nd April 1951

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE HIGH COURT AT SEREMBAN
CIVIL SUIT No. 34 of 1951

B E T W E E N:

Ana Runa Pana Lana Palaniappa Chettiar
Plaintiff

- versus -

20 1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants

P L A I N T

The Plaintiff above named states as follows:-

1. The Plaintiff has an interest in the firm of "Pana Lana Ana Runa" (PL.AR.) as a member of the Hundu Joint Family known as "Ravana Mana Pana Kuna

In the High Court

No.1

Plaint
2nd April
1951

(Continued)

Pana Ana Runa" (RM.P.KP.AR.), carrying on business as rubber land owners at No.72 Paul Street, Seremban, and reside at No. 74 Paul Street, Seremban, the First Defendant above-named has also an interest in the said firm "PL.AR." as a member of the said Joint Family, "RM.P.KP.AN.", and resides at No. 72 Paul Street, Seramban.

The Second Defendant abovenamed has also an interest in the said firm "PL.AR." as a member of the said Joint Family and resides at Karaikudi, South India. The Third Defendant is the wife of the First Defendant and the mother of the Second Defendant and resides at Karaikudi, South India.

2. The Plaintiff, the First Defendant and the Second Defendant, as co-parceners, are each entitled to a third share in the properties of the said Joint Family, situated in India, Federation of Malaya and elsewhere. The First Defendant is the father of the Plaintiff by his deceased wife Letchumi Achi, and is the father of the Second Defendant by his wife the Third Defendant.

3. In or about the year 1926, the First Defendant with moneys belonging to the said Joint Family established the said business of PL.AR. in Port Dickson and with the moneys of PL.AR. he purchased landed properties in the State of Negri Sembilan and had them registered in his name as PL.AR. Arunasalam Chettiar, PK.P.Arunasalam Chettiar, P.AR. Arunasalam Chettiar, KP.AR. Arunasalam Chettiar, or RM.PK.P.AR. Arunasalam Chettiar. The First Defendant also purchased, with funds belonging to the said Joint Family, two pieces of land in Negri Sembilan and a piece of land in Penang and placed them in the name of the Third Defendant. The Plaintiff claims that the said properties purchased in the name of the Third Defendant were held by her in trust for the members of the said Joint Family.

4. There are in South India the following movable and immovable properties belonging to the said Joint Family of the value of about $78,000.00:-

(i) jewellery, silver and brass utensils, and cash in the possession of the First Defendant of the value of $64,000.00

Carried forward $64,000.00

Brought forward	$64,000.00
(ii) landed properties in the name of the First Defendant of the value of	14,000.00
	$78,000.00

5. There are in the Federation of Malaya the following movable and immovable properties belonging to the said Joint Family of the value of about $202,000.00:-

(i) furniture and brass utensils in the possession of the First Defendant of the value of	$ 2,000.00
(ii) landed properties in the name of the First Defendant	175,000.00
(iii) landed properties in the name of the Third Defendant of the value of	25,000.00
	$202,000.00

6. The Plaintiff's mother, Letchumi Achi, had, before her death in the year 1922 in South India, possessed the following assets:-

(i) a sum of Rupees 3800 deposited with the First Defendant and interest thereon from 22nd January 1906

(ii) a sum of Rupees 8000 deposited with the First Defendant and interest thereon

(iii) jewellery in the possession of the First Defendant of the value of Rupees 12000.

The Plaintiff being the only son of his mother, the said Letchumi Achi, these assets passed to him on her death in accordance with the law

In the High Court

No.1

Plaint
2nd April
1951

(Continued)

of inheritance of the Chettiar community. The said three items of assets were brought into the said Joint Family and on 9th October 1940 the Plaintiff was paid from the said Joint Family fund the sum of Rupees 11000 to account of monies due to the Plaintiff's mother.

7. Between the year 1942 and the year 1948 the Plaintiff advanced to the said Joint Family from time to time various sums of money amounting to Rupees 10500 for the maintenance of the said Joint Family which sum the Plaintiff has not been repaid.

8. On the 4th day of October, 1945 the Plaintiff advanced a sum of Rupees 9350 to the said Joint Family on the security of certain jewellery of the said Joint Family. This sum of Rupees 9350 not been paid back to the Plaintiff but the Plaintiff has returned to the Third Defendant the jewellery deposited with the Plaintiff as security for the loan.

9. Divers disputes and differences having arisen between the First Defendant and the Plaintiff owing to the conduct of the First Defendant, the Plaintiff in the year 1950 asked the First Defendant for the payment of the debts due to the Plaintiff and for partition of the said Joint Family property. Arbitrators were appointed for settlement of accounts between the Plaintiff and the Defendants and for the partition of the said Joint Family property. The First Defendant failed to carry out the decision of the arbitrators and on the 15th day of July 1950 the Plaintiff filed a suit, being Original Suit No. 70 of 1950, against the Defendants in the Court of the Subordinate Judge of Devakottai, asking for, inter alia, for the partition of the said Joint Family property. The case is still pending in the said Court.

10. In the meantime, in or about October 1950 the First Defendant left South India, came over to Malaya and began to dispose of landed properties in the Federation of Malaya belonging to the Joint Family. The Plaintiff is informed and belives that the First Defendant is disposed of properties in Malaya belonging to the said Joint Family of the value of $100,000.00. On hearing that the First Defendant was disposing of the Joint Family's

property in Malaya, the Plaintiff flew over to Malaya arriving here on 7th March 1951 and has since lodged caveats against dealings with the unsold landed properties in Negri Sembilan.

11. The Plaintiff deems it necessary, in order to safeguard his interests in the said Joint Family property and monies due to him from the Joint Family that the First Defendant should be restrained from disposing of the properties of the said Joint Family.

The Plaintiff prays that this Honourable Court:

(1) decree a partition of the properties of the said Joint Family.

(2) order that an account be taken of the movable and immovable properties of the said Joint Family.

(3) declare that all properties, movable and immovable, held by, or in the name of, the First Defendant or the Third Defendant belong to the said Joint Family.

(4) order that an account be taken of the amounts due to the Plaintiff from the said Joint Family estate or from the First Defendant.

(5) order that an enquiry be held to ascertain what part of the amounts found due to the Plaintiff shall be paid from the said Joint Family estate and what part thereof shall be paid by the First Defendant.

(6) order such further and other relief as the Court shall deem fit and proper, and

(7) costs of the suit to the Plaintiff.

Signed illegible
Plaintiff's Solicitor

Sgd: AR.PL.Palaniappa Chettiar
Plaintiff

In the High Court

No.1

Plaint
2nd April
1951

(Continued)

I, Ana Runa Pana Lana Palaniappa Chettiar, the Plaintiff abovenamed, hereby declare that the above statement is true to my knowledge except as to matters stated on information and belief and as to those matters I believe it to be true.

DATED this 2nd day of April, 1951

Signed: AR.PL. Palaniappa Chettiar
Signature

In the High Court

No.2

Defendants' written Statement

(Undated)

No.2
DEFENDANTS' WRITTEN STATEMENT

IN THE SUPTEME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT SEREMBAN

Civil Suit No. 34 of 1951

Ana Runa Pana Lana Palaniappa Chettiar
Plaintiff

- versus -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants

WRITTEN STATEMENT OF THE FIRST, SECOND AND THIRD DEFENDANTS

The first, second and third Defendants state as follows:-

1. As to paragraph 1 and 2 of the Plaint.

(a) It is admitted:-

(i) that the first Defendant resides at 72 Paul Street, Seremban and is the father of the Plaintiff, who is at present residing at 74 Paul Street, Seremban, by his deceased wife Letchumi Achi.

(ii) that the second Defendant is the son of the first defendant by his wife the third defendant.

Both the second and third Defendants reside in India.

(b) It is denied:-

In the High Court

No.2

Defendants' written Statement

(Undated)

(Continued)

(i) that there exists or ever has existed a Hindu Joint Family known as "RM.P.KP.AR." of which the Plaintiff and the first and second Defendants or any of them are or ever have been members.

(ii) that the Plaintiff and the second Defendant have or that either of them ever has had any interest or share in the firm known as "PL.AR."

2. Further as to paragraphs 1 and 2 of the Plaint. For many years past there has existed and there now exists a Hindu Joint Family known as "RM.P.KP." The said Joint Family now consists of the first Defendant, the Plaintiff and the second Defendant and three sons of the deceased brothers of the first Defendant. The property of the said Joint Family consists only of a small amount of ancestral property at Kandanoor, South India which has never been partitioned.

The business of "PL.AR." and the assets and liabilities thereof are solely and exclusively the property and responsibility of the first Defendant and neither the Plaintiff nor the second Defendant nor any other person has or ever has had any interest or share in the said business.

3. As to paragraph 3 of the Plaint. It is admitted that on the 22nd August 1926 the first Defendant started the business of "PL.AR." at Port Dickson. It is denied that the said business was started with moneys belonging to the Joint Family known as "RMP.KP." or belonging to a Joint Family known as "RM.P.KP.AR." or belonging to any joint family. The said business of "PL.AR." was started with money and property belonging exclusively to the first defendant.

4. Further as to paragraph 3 of the Plaint. It is admitted that immovable properties of the business of "PL.AR." are or have been registered and held in the names "PL.AR. Arunasalam Chettiar", "PK.P. Arunasalam Chettiar", "P.AR.Arunasalam Chettiar" and "KP.AR.Arunasalam Chettiar". Such immovable properties either belong or belonged or were purchased with money belonging exclusively to the first Defendant. It is denied that any immovable

property of the business of "PL.AR", is or ever has been registered or held in the name "RM.PK.P.AR.Arunasalam Chettair."

5. Further as to paragraph 3 of the Plaint. It is admitted that the first Defendant purchased two pieces of land in Negri Sembilan and that he caused the same to be registered in the name of the third Defendant. It is denied that the said two pieces of land were purchased with funds belonging to the said or any Joint Family. The said two pieces of land were purchased with monies belonging exclusively to the first Defendant and were registered in the name of the third Defendant in trust for the first Defendant. It is denied that the first Defendant has ever purchased any land in Penang.

6. As to paragraph 4 of the Plaint. It is denied that, apart from the small amount of ancestral property belonging to the Joint Family known as "RM.P.KP", which is referred to in paragraph 2 hereof, there is any movable or immoveable property in South India belonging to any Joint Family of which the Plaintiff and the first Defendant are or ever were members. The The Plaintiff has instituted Original Suit No. 70 of 1950 in the Subordinate Court at Devakottai, South India against the Defendants and the Plaintiff inter alia claims therein partition of the property of the Joint Family known as "RM.P.KP." The said suit is pending and the Defendants will claim that this suit should be stayed in so far as it relates to any property situate in South India or elsewhere outside the jurisdiction of this Court.

7. Each and every allegation made in paragraph 5 of the Plaint is denied.

8. As to paragraph 6 of the Plaint. It is denied that the Plaintiff's mother died possessed of the sums of Rs. 3800 and Rs. 8000 deposited with the first Defendant and of jewellery to the value of Rs.12000 in the possession of the first defendant.

It is admitted that on the marriage of the

In the High Court

No.2

Defendants' written Statement

(Undated)

(Continued)

first Defendant with the Plaintiff's mother in January 1906 small sums of money were deposited as Sreedhanam and Sreemurat gifts and that the said sums of money together with accumulated interest were later deposited with the first Defendant. It is further admitted that the Plaintiff's mother died possessed of jewellery to the value of Rs.1500. It is further admitted that the Plaintiff was entitled to the said monies and jewellery.

In about the month of October 1938 the Plaintiff claimed the said sums of money and jewellery and also that a sum of money be set aside by the first Defendant for the marriage expenses of the Plaintiff. The amount of the said monies with accrued interest and the value of the said jewellery were then agreed between the Plaintiff and the first Defendant to be Rs.6827-6-00 and Rs. 1500 respectively and the first Defendant then also agreed to set aside a sum of Rs.11,672-10-0 for the marriage expenses of the Plaintiff on the condition, to which the Plaintiff agreed, that the last mentioned sum would only be paid to the Plaintiff if he married a girl chosen by the first Defendant. The total of the said three sums of money was Rs.20,000/- and in or about the month of October 1938 the first defendant gave to the Plaintiff a Tamil Letter in respect of that sum.

It is admitted that on the 9th October 1942 (not 1940) the first Defendant at the urgent request of the Plaintiff paid to the Plaintiff a sum of Rs.11,000/- in respect of his marriage expenses to a girl not chosen by the first Defendant. The said payment was endorsed on the said Tamil Letter.

Except as herein expressly admitted each and every allegation made in paragraph 6 of the Plaint is denied.

9. Each and every allegation made in paragraph 7 of the Plaint is denied. The plaintiff for the whole of his life has been dependent on the first Defendant for his maintenance.

10. As to paragraph 8 of the Plaint. It is admitted that on the 4th October 1945 the first Defendant borrowed the sum of Rs.9350/- from the Plaintiff. As security for repayment of the said sum there was deposited with the Plaintiff jewellery

belonging to the third Defendant. In the first week of February 1950 the first Defendant offered to pay the Plaintiff the said sum of Rs.9,350/- and accumulated interest on his returning the said jewellery but the Plaintiff refused to return the same. The first Defendant is ready and willing at any time to pay the Plaintiff the amount due in respect of the said loan on his returning the said jewellery.

Except as herein expressly admitted each and every allegation made in paragraph 8 of the Plaint is denied.

11. Except that it is admitted that disputes have arisen between the Plaintiff and the first Defendant and that the Plaintiff has instituted the suit referred to in paragraph 9 of the Plaint each and every allegation made in the said paragraph 9 is denied. In particular it is denied that arbitrators were appointed to settle the disputes between the Plaintiff and the First Defendant, that any award or decision was made by arbitrators and that the first Defendant failed to carry out the decision of any arbitrators. The whole of the allegation relating to the appointment of arbitrators and the decision of arbitrators are false to the knowledge of the Plaintiff.

12. As to paragraph 10 of the Plaint. It is admitted that the first Defendant came to Malaya in October 1950 and that the Plaintiff came to Malaya in about the first week of March 1951. It is denied that since October 1950 the first Defendant has sold or disposed of any property belonging to the Joint Family referred to. There is not nor has there ever been any such property in the Federation of Malaya. Except as expressly admitted each and every allegation made in paragraph 10 of the Plaint is denied.

13. Except in so far as the same are herein expressly admitted each and every allegation made in the Plaint is denied as if the same were set out herein and traversed seriatim.

The Defendant pray that this suit may be

In the High Court

No.2

Defendants' written Statement

(Undated)

(Continued)

dismissed with costs.

Signed: Pana Lana Ana Runa Arunasalam Chettiar
(in Tamil)
1st Defendant

Signed: Pana Lana Ana Runa Arunasalam Chettiar
Ana Runa Leyna Lakshmanan Chettiar Power
(in Tamil)
2nd Defendant

Meenakshi Achi (f) Power
Signed: Pana Lana Ana Runa Arunasalam Chettiar
(in Tamil)
3rd Defendant

DEFENDANT'S SOLICITORS

WE, PANA LANA ANA RUNA ARUNASALAM CHETTIAR, ANA RUNA LEYNA LAKSHMANAN CHETTIAR and MENNAKSHI ACHI (f), the first, second and third Defendants abovenamed, hereby declare that the above statement is true to our knowledge except as to matters stated in information and belief and as to those matters we believe it to be true.

DATED this day of 1951

Signed: Pana Lana Ana Runa Arunasalam Chettair
(in Tamil)
1st Defendant

Ana Runa Leyna Lakshmanan Chettiar Power
Signed: Pana Lana Ana Runa Arunasalam Chettair
(in Tamil)
2nd Defendant

Meenakshi Achi (f) Power
Signed: Pana Lana Ana Runa Arunasalam Chettiar
(in Tamil)
3rd Defendant

No. 3

ORDER

In the High Court

No.3

Order
3rd
December
1954

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT SEREMBAN

Civil Suit No. 34 of 1951

Ana Runa Pana Lana Palaniappa Chettiar
Plaintiff

- versus -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants

Before:

The Hon. Mr. Justice Abbot, Judge, Supreme Court, Federation of Malaya

IN OPEN COURT

Friday 3rd day of December 1954

O R D E R

UPON HEARING Mr. F.G.Charlesworth for the Defendants and Mr. R. Ramani with Mr. M.N. Cumarasami for the Plaintiff and UPON READING the Notice of Motion dated the 21st day of October, 1954 the Affidavits sworn by the first defendant on the 8th day of September 1953, the 21st day of October 1954 and the 2nd day of December 1954 and the affidavit sworn by the Plaintiff on the 27th day of November 1954 AND 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

In the High Court

No. 3

Order 3rd December 1954

(Continued)

firm of "PL.AR." Port Dickson and the assets thereof belong to a Hindu Joint Family as alleged by the Plaintiff or are the exclusive separate property of the defendant 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.

DATED this 3rd day of December 1954

Signed: JOO PENG LIM

Assistanr Registrar
Supreme Court,
Federation of Malaya

(L.S.)

No. 4

In the High Court

JUDGMENT

No. 4

Judgment 11th July 1964

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit No. 34 of 1951

B E T W E E N:

Ana Runa Pana Lana Palaniappa Chettiar
Plaintiff

- and -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants

JUDGMENT

Pursuant to the Order of Court dated the 11th day of July 1964 whereby it was ordered that the Plaintiff be at liberty to sign final judgment against the Defendants as prayed IT IS THIS DAY ADJUDGED:

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 amounts due to the Plaintiff from the Joint Hindu Family estate or from the first Defendant;

4. an inquiry be held to ascertain what part of the amount found due to the Plaintiff

In the High Court

No.4

Judgment 11th July 1964

(Continued)

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.

GIVEN under my hand and the seal of the Court this 11th day of July 1964

Signed: LEE MOH WAH

Assistant Registrar
High Court
Seremban

10

(L.S.)

No. 5

ORDER

In the High Court

No.5

Order
11th July
1964

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit No. 34 of 1951

B E T W E E N:

Ana Runa Pana Lana Palaniappa Chettiar
Plaintiff

- and -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants

BEFORE THE HONOURABLE MR. JUSTICE ISMAIL KHAN

IN OPEN COURT
This 11th day of July, 1964

O R D E R

UPON MOTION made unto this Court on the 11th day of July 1964 AND UPON HEARING Mr. A.D.Rajah of Counsel for the Plaintiff and Mr. Atma Singh Gill of Counsel for the Defendants AND UPON READING the Notice of Motion dated the 18th day of June 1964 and the affidavits of Ana Runa Pana Lana Palaniappa Chettiar sworn on the 16th day of June 1964 and Pana Lana Ana Runa Arunasalam Chettiar sworn on the 9th day of July 1964 all filed herein IT IS ORDERED that final judgment be entered for the Plaintiff in this suit as prayed pursuant to the Consent Order of this Honourable Court dated the 3rd day of December 1964 made herein AND IT IS ORDERED that a Receiver to be agreed as between the parties be appointed within two weeks with liberty to

In the High Court

No.5

Order
11th July
1964

(Continued)

apply AND IT IS ORDERED that the Defendants do pay the Plaintiff the costs of this suit

GIVEN under my hand and the Seal of the Court this 11th day of July 1964

Signed: LEE MOH WAH

Assistant Registrar,
High Court,
Seremban

In the High Court

No.6
Grounds of Judgment
13th August 1964

No.6
GROUNDS OF JUDGMENT

IN THE HIGH COURT IN MALAYA AT SEREMBAN

STATE OF NEGRI SEMBILAN

Civil Suit No. 34 of 1951

BETWEEN:

Ana Runa Pana Lana Palaniappa Chettiar
Plaintiff

- and -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants

GROUNDS OF JUDGMENT

The Plaintiff filed the above suit on 2nd April, 1951. Sometime in June, 1950, the Plaintiff instituted proceedings against the Defendants in the Subordinate Court at Devakottai, South India - Suit No. 70 of 1950.

The main issue in both suits and the only issue in this suit was whether the business carried on under the names "PL.AR" at Port Dickson and the assets of that business belong to a Hindu Joint Family consisting of the Plaintiff and the Defendants, as alleged by the Plaintiff, or whether the said business and the assets thereof belong exclusively to the First Defendant and are his own separate property.

The issue was tried in the said Subordinate Court, Devakottai, South India, and judgment was given in favour of the Defendants. The

In the High Court

No.6

Grounds of Judgment 13th August 1964

(Continued)

Plaintiff appealed against that judgment to the High Court, Madras.

On 3rd December, 1954, on an application by way of Motion by the Defendants, this Court made an order that:-

"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 Plaintiff or are the exclusive separate property of the Defendant 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."

The issue between the parties was finally decided by the Supreme Court of India at New Delhi in consolidated Appeals Nos. 441 and 442 of 1962 in a judgment delivered on 25th October, 1963, which reads, inter alia, as follows:-

"There will be a declaration that the PL.A.R. 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 on December 3, 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."

The Plaintiff now applies by way of motion for final judgment to be entered pursuant to the Order of this Court dated 3rd December, 1954, for

the appointment of a receiver to take the necessary accounts and consequential directions and costs.

Mr. Atma Singh for the Defendants attacked the Order dated 3rd December, 1954, on the ground that it was "bad in law" and for that reason asked that it should be set aside and that the Plaintiff's application be dismissed. I feel that I could not at that stage go into the merits of the Defendants' application as to the said Order. They should have, in the first place, applied by way of motion to set it aside and state their grounds of objection thereto - see Mullins v. Howell (1879) 11 Ch. D. 763. If I was wrong in this, there were still overwhelming reasons for not acceding to the Defendants' application. It was made after a lapse of ten years, certainly not within a reasonable time. Again, the Defendants had made use of the Order in the Indian Courts on the footing that it was a valid Order. The Judgment of the Supreme Court of India says this at pages 14 and 15:-

> "The plaintiff had instituted another suit being Suit No.34 of 1951 in the Supreme Court of the Federation of Malaya in the High Court at Seremban for a declaration that the plaintiff had interest in the P.L.A.R. firm at Port Dickson as a member of a joint Hindu family consisting of himself and the defendants and for partition of the assets of the joint family. In that suit, on the defendants Arunasalam undertaking to abide by any final decree or decision of the Courts in India on the issue arising in O.S. No.70 of 1950 in the Court of the Subordinate Judge at Devakottai as to whether the firm P.L.A.R. at Port Dickson and the assets thereof belong to a Hindu joint family as alleged by the plaintiff or are the separate property of the defendants as alleged by them, the Court ordered that all further proceedings be stayed until the final determination or abandonment of the plaintiff's appeal against the judgment in the Devakottai Suit, ordinarily the Courts in India have, by the rules of private International Law, no authority to adjudicate

In the High Court

No.6

Grounds of Judgment 13th August 1964

(Continued)

upon title to immovable property situate outside India. But the Defendants having agreed in Suit No.34 of 1951 before the Supreme Court of the Federation of Malaya, the parties applied by C.M.P. No.6218 of 1956 in the High Court of Madras that the issue relating to the title to the assets of the P.L.A.R. firm be decided. The High Court was therefore expressly invited by the parties to give a decision on the merits of the dispute in the light of the evidence led before the Trial Court and the High Court agreed to decide the disputed questions. Before us also, counsel for the parties have adopted the same attitude, and have asked us to decide the appeal on the merits, including the dispute as to title to immoveables in Port Dickson."

In the result I gave judgment for the Plaintiff as prayed.

Signed: Ismail Khan
Judge
High Court
Malaya

Seremban

13th August 1964

No. 7

ORDER

In the Federal Court

No. 7

Order 14th March 1966

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL No. 61 of 1964

BETWEEN:

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Appellants

- and -

Ana Runa Pana Lana Palaniappa Chettiar
Respondent

(In the matter of Civil Suit No.34 of 1951
In the High Court in Malaya at Seremban)

BETWEEN:

Ana Runa Pana Lana Palaniappa Chettiar
Plaintiff

- and -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants

Coram:

THOMSON, LORD PRESIDENT, FEDERAL COURT, MALAYSIA; SYED SHEH BARAKBAH, CHIEF JUSTICE, HIGH COURT IN MALAYA
and
TAN AH TAH, JUDGE, FEDERAL COURT, MALAYSIA

IN OPEN COURT
This 14th day of March 1966

ORDER

THIS APPEAL coming on for hearing on the

In the Federal Court

No.7
Order
14th
March 1966
(Continued)

12th day of November 1964, 2nd day of March 1965 and 14th day of March 1966 in the presence of Mr. Atma Singh Gill of Counsel for the Appellants and Mr. A. D. Rajah of Counsel for the Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid for the parties IT IS ORDERED that paragraphs 1, 2, 3 and 4 of the Judgment of the High Court at Seremban dated 11th day of July 1964 be confirmed and paragraph 5 thereof be deleted AND IT IS ORDERED that the said Judgment be varied by adding the following terms:-

(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 paid out of the assets of the estate.

AND IT IS ORDERED that the Appeal be and is hereby allowed and that the costs of all the parties in this Appeal be taxed and paid out of the assets of the estate AND IT IS LASTLY ORDERED that the sum of $500/- (Five hundred Dollars only) deposited in Court be paid out to the Appellants

GIVEN under my hand and the Seal of the Court this 14th day of March 1966

Signed: Illegible

Chief Registrar,
Federal Court, Malaysia

(L.S.)

No. 8

JUDGMENT

In the Federal Court

No.8

Judgment 21st March 1968

IN THE HIGH COURT IN MALAYA AT SEREMBAN
STATE OF NEGRI SEMBILAN
Civil Suit No. 34 of 1951

Summons-in-Chambers

BETWEEN:

Ana Runa Pana Lana Palaniappa Chettiar
Plaintiff
Applicant

- and -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f)
Defendants
Respondents

J U D G M E N T

In this application by way of Summons-in-Chambers pursuant to an Order of the Court dated 11th July, 1964, amended by an Order of the Federal Court dated 11th March, 1966, the Plaintiff asks for the following reliefs:-

(a) That the first defendant do file an account of his management of the PL.AR. Firm from the date of commencement within one month from the date of this Order

(b) The plaintiff be at liberty to falsify and surcharge the said accounts

(c) An enquiry 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

In the Federal Court

No.8

Judgment 21st March 1968

(Continued)

(d) That the costs of this application and all other incidentals thereto be paid out of the estate

It is agreed that only prayer (a) should be dealt with at this stage

Under the said Order dated 11th July, 1964, it was held:-

(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 amounts due to the Plaintiff from the Joint Hindu Family estate or from the first defendant;

(4) that an enquiry 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

The judgment of the Federal Court confirms paragraphs 1, 2, 3 and 4 of the said judgment and introduced, inter alia, the following variations, viz:-

(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 paid out of the assets of the estate

The first defendant by his affidavit dated 21st December, 1967, alleges that certain account books relating to the firm are with the plaintiff. This is denied by the plaintiff in his affidavit who claims that all the relevant books are with the first defendant. It is clear from the affidavit of one M.S. Perumal s/o Sinnasamy, a former clerk in the firm of PL.AR. from the year 1927 to 1933 and from 1934 to 1947, as attorney of the firm, that all the books of accounts were handed over to the first defendant when he ceased to act as such attorney. No application was made by either party to cross-examine each other on his affidavit.

However, Mr. Atma Singh conceded at the hearing that the books were handed over to the first defendant. He now contends that under Hindu Law the first defendant as "karta" or manager of the Joint Hindu Family business at Port Dickson is under no liability to account for his management of the Joint Family property except as from the time of the order directing a partition of the Joint Family property. This raises the issue of limitation and, in my opinion, should have been pleaded in the statement of defence.

In his plaint the Plaintiff claims an interest as a member of a Joint Hindu Family in the firm of Pana Lana Ana Runa (PL.A.R.) and prays, inter alia, that an account be taken of the movable and immovable properties of the said Joint Family.

The defence denies that the firm of PL.A.R. forms part of the Joint Family property, but it was not pleaded in the alternative that if the Joint Family property comprised the said firm of PL.A.R., then the first defendant is liable to account only for the period since the partition. Be that as it may, on general principle limitation is a

In the Federal Court

No. 8

Judgment 21st March 1968

(Continued)

matter of procedure and is governed by the lex fori law of the country to which the Court, wherein any legal proceedings are taken, belongs. (See Dicey, 7th Edition, p.1087). It follows therefore that even if the defence had raised a plea of limitation, the law applicable would be lex fori.

In the present case, no such plea was raised in the pleadings.

In the result, there will be an order that the first defendant do file within two months from the date hereof an account of his management of the PL.A.R. firm from the time he assumed the management thereof.

(Signed) Ismail Khan
Judge
High Court, Malaya

Seremban

21st March 1968

Mr. A.D. Rajah for Plaintiff/Applicant

Mr. Atma Singh Gill for Defendants/Respondents

No. 9
ORDER

In the Federal Court

No. 9

Order
21st March
1968

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Civil Suit No. 34 of 1951

BETWEEN

Ana Runa Pana Lana Palaniappa Chettiar
Plaintiff

- and -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants

BEFORE THE HONOURABLE MR. JUSTICE DATO ISMAIL KHAN, JUDGE, MALAYA

IN OPEN COURT
This 21st day of March, 1968

O R D E R

The Summons-in-Chambers dated the 27th day of October, 1967 adjourned to Open Court coming on for hearing on the 4th day of January, 1968 before the Honourable Mr. Justice Dato Ismail Khan, Judge, Malaya, in the presence of Mr. A.D. Rajah of Counsel for the Plaintiff and Mr. Atma Singh Gill of Counsel for the Defendants AND UPON READING the Summons-in-Chambers dated the 27th day of October, 1967 and the Affidavits of Ana Runa Pana Lana Palaniappa Chettiar sworn on the 25th day of October, 1967, and 28th day of December, 1967, the Affidavit of Pana Lana Ana Runa Arunasalam Chettiar sworn on the 21st day of December, 1967, and the Affidavit of M.S. Perumal s/o Sinnasamy sworn on the 26th day of December, 1967 all filed herein AND UPON HEARING what was alleged by Counsel aforesaid this Court did order that the Summons do stand for judgment

In the Federal Court

No.9

Order 21st March 1968

(Continued)

and the same coming on for judgment this day in the presence of Counsel as aforesaid IT IS ORDERED that the First Defendant do file an account of his management of the PL.AR. Firm from the date of commencement within two months from the date of this order AND IT IS ORDERED that the rest of the matters applied for in the said Summons-in-Chambers be adjourned sine die

GIVEN under my hand and the Seal of the Court this 21st day of Match 1968

Signed: Lee Moh Wah

Assistant Registrar,
High Court,
Seremban

INDORSEMENT

If you, the within-named Pana Lana Ana Runa Arunasalam Chettiar neglect to obey this order by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same order

DATED this 3rd day of April, 1968

Signed: LEE MOH WAH

Assistant Registrar,
High Court,
Seremban

(L.S.)

In the Federal Court

No.10

Memorandum of Appeal 2nd May 1968

No.10

MEMORANDUM OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

CIVIL APPEAL No. X 21 of 1968

BETWEEN:

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Appellants

- and -

Ana Runa Pana Lana Palaniappa Chettiar Respondent

(In the matter of Civil Suit No.34 of 1951 in the High Court in Malaya at Seremban)

BETWEEN:

Ana Runa Pana Lana Palaniappa Chettiar Plaintiff

- and -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants

MEMORANDUM OF APPEAL

PANA LANA ANA RUNA ARUNASALAM CHETTIAR, ANA RUNA LEYNA LAKSHMANAN CHETTIAR and MEENAKSHI ACHI (f), the appellants abovenamed appeal against the whole of the decision of the Honourable Mr. Justice Dato Ismail Khan given at Seremban on the 21st day of March 1968 in the Plaintiff/Respondent's application by way of Summons in Chambers dated 27th day of October 1967 and adjourned into open Court dealing with prayer (a) of the said application, on the

In the Federal Court

No.10

Memorandum of Appeal 2nd May 1968

(Continued)

following grounds:

1. That the Learned Trial Judge misdirected himself in law and facts in holding that the First Defendant was accountable to the Plaintiff from the time he assumed management of the PL.AR. Firm.

2. That the Learned Trial Judge failed to appreciate that the parties were giverned by their personal law applicable to Hindu Joint Family which is Mitakshara law and that a member of a Hindu Joint Family cannot sue his karta or manager for accounts for a period anterior to the date of decree for partition.

3. That the Learned Trial Judge failed to appreciate that the First Defendant had throughout denied the Plaintiff's claim for partition as a co-parcener of the said Hindu Joint Family, proof whereof was on the Plaintiff, and until such proof and the decree thereto, the Plaintiff had no status nor had he a certain definite share therein, until decree, adjudicating on his alleged status in the said Hindu Joint Family.

4. That the Learned Trial Judge overlooked the fact that nowhere in the Plaintiff's plaint did he plead for an order for accounts, right from the inception of the PL.AR. Firm, hence the question of want of a plea of limitation in the Defence by way of alternative or otherwise, did not arise, as it was implied and understood that the Plaintiff would be entitled to account only from the date when his status was determined by law.

5. That the Learned Trial Judge failed to appreciate that the parties had agreed to abide by the issues adjudicated by the Courts in India and nowhere in the Judgment of the Supreme Court of India modifying the Judgments of the lower Courts, is it adjudicated that the Plaintiff is entitled to an account of the PL.AR. Firm right from the inception, except only in the case of an amount of Rs. 3800/- being the Asthi fund of the Plaintiff's mother for which an account was ordered to be rendered from 23.3.1906.

6. That the Learned Trial Judge erred in law that

the procedure as to matters touching Hindu Joint Family property was governed by lex fori, law of the country, to which the Court, wherein any legal proceedings are taken belongs, especially when the parties were living and the Courts in this country have given indulgence to such suits and further when there was provision in law of this country for the application of personal law of the parties in respect of matters touching and concerning landed properties.

7. That the Learned Trial Judge misdirected himself, that the account books were with the First Defendant, when there were concurrent and conclusive findings by the Indian Judges that the account books which had been brought to India by the First Defendant had been taken away by the Plaintiff by breaking into the Defendants' house, to enable him to formulate his action.

8. That the Learned Trial Judge failed to appreciate that in view of the said account books being in the possession of the Plaintiff it was impossible for the First Defendant to render any accounts, within 2 months of the Order to which accounts in any event the Plaintiff was not entitled according to their personal law applicable to the parties.

9. That the Learned Trial Judge failed to consider all the surrounding circumstances and made the Order for accounts which is bad in law or alternatively too wide under the circumstances.

DATED the 2nd day of May 1968

Signed: Atma Singh Gill & Co.
Defendants' Solicitors

To: The Registrar, Federal Court, Kuala Lumpur

And to: Messrs. Lovelace & Hastings, Solicitors for the Respondent, No. 57, Klyne Street, Kuala Lumpur

In the Federal Court

No.11

Judgment of Azmi C.J. 4th November 1968

No.11

JUDGMENT of AZMI, C.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (APPELLATE JURISDICTION)
FEDERAL COURT CIVIL APPEAL No.X 21 of 1968

(Seremban High Court Civil Suit No.34 of 1951)

BETWEEN

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Appellants

- and -

Ana Runa Pana Lana Palaniappa Chettiar Respondent

(In the matter of Civil Suit No. 34 of 1951 in the High Court in Malaya at Seremban)

BETWEEN:

Ana Runa Pana Lana Palaniappa Chettiar Plaintiff

- and -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants

CORUM: AZMI, CHIEF JUSTICE, MALAYA,
ONG HOCK THYE, JUDGE FEDERAL COURT OF MALAYSIA,
SUFFIAN, JUDGE FEDERAL COURT OF MALAYSIA

Judgment of Azmi, Chief Justice, Malaya

This is an appeal against the order of the High Court at Seremban.

It is necessary to deal with the history of the litigation from the start.

In 1950, the plaintiff, the respondent in this appeal instituted proceedings against the defendants the appellants in this appeal) in the subordinate Court of Devakottai in Originating Suit No. 70 of 1950. In that suit the plaintiff sued for various reliefs, the most important of which was for directing of the movable and immovable properties belonging to the joint family consisting of himself and the defendants to be determined and divided into three shares and for the allotment of one share to

him. The other reliefs were for directing the first defendant to produce into court, all the accounts, documents and vouchers pertaining to the joint family of the parties for determining the payment of the amount payable separately from out of the joint family funds and for granting incidental and necessary reliefs. The subordinate court, in its judgment declared that the plaintiff was entitled to partition and possession of 1/30th share of certain properties described in a schedule and also to partition and separate possession of 1/3rd of another set of properties also referred to in the schedule but in other respects dismissed the plaintiff's suit.

Before that judgment was given, the plaintiff also brought a suit in Seremban - Suit No. 34 of 1951 in which the plaintiff claimed that the property in Port Dickson belonged to a Hindu Joint Family of which he was a co-parcener.

The plaintiff appealed against the judgment of the subordinate Court to the Divisional Court in Madras and on the 3rd December 1954, the parties in the Seremban suit obtained an order of the court by consent to the effect that they undertook to abide in the proceedings instituted in India on the issue arising in the Originating Suit No. 70 of 1950 as to whether the firm of PL.A.R. Port Dickson and the assets thereof belonged to a Hindu Joint Family as alleged by the plaintiff or were the separate exclusive property of the defendants as alleged by them.

The Supreme Court of India finally disposed of the matter. In its judgment dated 25th October, 1963, among other things the Supreme Court made the following declarations:-

> "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

In the Federal Court

No.11

Judgment of Azmi, C.J. 4th November 1968

(Continued)

be made as agreed by the parties before the High Court at Seremban in Civil Suit No.34 of 1951 as recorded in the decreee in the order of that Court on 3rd December 1954 and further before the High Court of Madras in C.M.P. 6218 of 1956. Appropriate directions to be obtained by the parties in Suit No.34 of 1951 from the High Court as Seremban."

It is also necessary I think to refer to the following part of the judgment of the Supreme Court.

"Having carefully considered the contents of the letters and the conduct of the first defendant in allowing himself to be assessed to tax qua the income of the PL.AR. Firm as a Hindu undivided family and the evidence about the commencement and consolidation of that business with the aid of funds which originally belonged to the larger joint family business, and viewed in the light of the character of the business which was of the same nature as the original joint family business, we have no doubt that the PL.AR. Port Dickson business was started and conducted by the first defendant for and on behalf of himself and his sons and was not his exclusive business."

It is apparent from that passage of the judgment that the first defendant had from the beginning treated the PL.A.R. business as his own and thereby had deprived the plaintiff from the enjoyment of that property as coparcener of the joint family property.

In 1964 the plaintiff applied in the Seremban Civil Suit 34 of 1951 by way of motion for final judgment to be entered pursuant to the order of that court dated 3rd December 1954 and for the appointment of a receiver to take the necessary accounts and consequential directions. The Seremban High Court made the order as prayed. On appeal to the Federal Court the order of the Seremban High Court was varied by the addition of the following:

(1) That the issues adjudicated upon by the Supreme Court of India in the Court of

subordinate Judge, Devakottai Original Suit No. 70 of 1950 be binding on the parties when taking account."

On a subsequent date, the plaintiff made a further application by way of summons in chambers praying, among other things, for an order that the first defendant do file an account of his management of the PL.AR. Firm from the date of commencement within one month from the order

(2) That the plaintiff be at liberty to falsify and surcharge the said accounts

(3) An enquiry be held to ascertain what part of the amount found due to the plaintiff shall be paid from the said joint Hindu Estate and what part to be paid by the first defendant.

Ismail Khan J. as he then was, allowed the prayer in paragraph (1) with an amendment that the time for filing the account be made within 2 months from the date of his order. It is now against that order that the defendant brought this appeal before us.

There are several grounds of appeal but the substantial one appears to the effect that the plaintiff was not entitled to have the accounts of the family property from the commencement of its inception on the ground that the personal law of this family being the Mitakshara law, he as a member of a joint Hindu family cannot sue his manager for accounts for a period anterior to the date of the decree for partition. In support counsel for the appellant read to us certain extracts from C.M. Rows: Treatise of the Law of Injunctions by B.R. Verma 3rd Edn. Vol. 1 pages 839 and 840 - 42 and cited also Babbur Basavayya and others vs. Babburu Guravayya and Anor. (1) and T.S. Swaminatha Udavar vs. T.S. Swaminatha Udayar vs. T.S. Gopalaswami Odayer and others. (2)

In the case of Sukhdeo and Anor. v. Basdeo and ors. (3) the High Court at Allahabad had this to say:-

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(1) 1951 A.I.R. (M) pp. 938 @ 939 & 940
(2) 1939 A.I.R. (M) 81
(3) 1935 A.I.R. (M) 594 @ 597

In the Federal Court

No.11

Judgment of Azmi, C.J. 4th November 1968

(Continued)

"A cross-objection has been filed by the plaintiffs as regards the refusal by the Court below to order Sukhdeo to render account of his dealings with the family property. It is settled law that in the absence of proof of misappropriation or fraudulent or improper conversion by the manager of a joint family a coparcener seeking partition is not entitled to call upon the manager to account for his past dealings with the family property. The coparcener is entitled only to an account of the joint family property as it exists on the date he demands partition."

It was, however, urged on behalf of the respondent that where a coparcener has been entirely excluded from the enjoyment of the family property he is entitled to account of the income derived from the family property and to have his share of the income ascertained and paid to him. In other words, he is entitled to what are called mesne profits. The question of a manager's liability to account and the right to mesne profits previous to partition was dealt with in case of Bhivrav v. Setaram, (4) and the headnote reads as follows:-

"Although, as a general rule, no member of an undivided Hindu family can have any claim to mesne profits previous to partition, yet mesne profits may be allowed on partition where one member of the family has been entirely excluded from the enjoyment of the property, or where it has been held by a member who claimed to treat it as impartible, and, therefore, exclusively his own."

The following passage appears at page 536 of the judgment:-

"On a careful consideration of these authorities, we feel satisfied that (1) while, as a general rule, it is true in the words of Mr. Mayne (5th Ed., para. 429) that "no member" of an undivided Hindu family "can have any claim to mesne profits previous to partition, because it is assumed that all surplus profits have, from time to time, been applied for the benefit" of the family, yet

(4) 1895 Vol. XXIX Bom. 532

(2) that this is only a presumption, and that "mesne profits may be allowed on partition when one member of the family who claimed a right to treat it as impartible, and therefore exclusively his own."

I will now consider the fifth and sixth grounds of appeal, namely to the effect that no where in the judgment of the Supreme Court of India was it adjudicated that the plaintiff was entitled to an account to the PL.AR. firm right from the inception, except, in the case of the rupees 3,800. That is quite true but in my view it was agreed by both parties that the judgment of the Supreme Court in reference to the immovable property situated in Malaysia to be purely a declaratory judgment since the Supreme Court of India had no jurisdiction to adjudicate on immovable property outside its jurisdiction. In my view, therefore, the last part of the Order of the Supreme Court which I had previously quoted namely, "Appropriate directions to be obtained by the parties in Suit No. 34 of 1951 from the High Court at Seremban", was intended that the court in this country would give any such necessary orders for the purpose of carrying out the declaratory judgment of Supreme Court of India and that direction is wide enough to include any necessary order for taking accounts. I would therefore say that these grounds must fail.

Grounds of Appeal Nos. (7) and (8) read as follows:-

(7) That the learned Trial Judge misdirected himself, that the account books were with the First Defendant, when there were concurrent and conclusive findings by the Indian Judges that the account books which had been brought to India by the first defendant had been taken away by the Plaintiff by breaking into the Defendant's house, to enable him to formulate his action.

(8) That the learned trial Judge failed to

In the Federal Court

No.11

Judgment of Azmi, C.J. 4th November 1968

(Continued)

appreciate that in view of the said account books being in the possession of the Plaintiff it was impossible for the first Defendant to render any accounts, within 2 months of the Order to which accounts in any event the Plaintiff was not entitled according to their personal law applicable to the parties.

Counsel for the first Defendant pointed out to us that the learned Judge Ismail Khan failed to take into account the finding of fact made by the subordinate Court in Madras to the effect that the account books in question were taken away by the plaintiff. There was no direct evidence to show that the plaintiff took away the books.

The learned subordinate Court apparently accepted the evidence of the first defendant that he kept the books in a room in the house and that he was forced to leave the house subsequently. From that he made an inference that the plaintiff had opened the rooms and almeriahs and taken away the account books. In view of the fact that the family dispute had already arisen long before this alleged incident, it is hard to believe that the first defendant would have parted with the books so easily. In the circumstances I would agree with the finding made by Ismail Khan J. I would therefore dismiss the appeal with costs.

Tan Sri Azmi bin Haji Mohamed
Chief Justice, Malaya

Suffian, F.J. concurred

Kuala Lumpur
4th November 1968

Mr. Atma Singh Gill of Messrs. Atma Singh Gill & Co., Solicitors for the Appellants

Mr. A.D. Rajah of Messrs. Lovelace & Hastings Solicitors for the Respondent

No.12

JUDGMENT of ONG, F.J.

In the Federal Court

No.12

Judgment of Ong, F.J. 4th November 1968

IN THE FEDERAL COURT OF MALAYSIA AT KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL No. X 21 of 1968

BETWEEN:

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Appellants

- and -

Ana Runa Pana Lana Palaniappa Chettiar
Respondent

(In the matter of Civil Suit No. 34 of 1951 in the High Court in Malaya at Seremban

BETWEEN:

Ana Runa Pana Lana Palaniappa Chettiar
Plaintiff

- and -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants)

Coram: Azmi, Chief Justice, Malaya
Ong, Judge, Federal Court, Malaysia
Suffian, Judge, Federal Court, Malaysia

JUDGMENT of ONG, F.J.

Litigation between these parties commenced in India in 1950 and in the High Court at Seremban in 1951, with the respondent Palamiappa as plaintiff. The action in Malaya was stayed upon an undertaking given by Arunasalam, the first defendant, to abide by any final decree or decision of the courts in India. On October

In the Federal Court

No.12

Judgment of Ong, F.J. 4th November 1968

(Continued)

25, 1963 the Supreme Court of India pronounced judgment declaring "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 that the plaintiff is entitled to a third share therein." It was further ordered inter alia that appropriate directions be obtained from the High Court at Seremban.

In consequence of the above judgment an order was made by the High Court at Seremban on July 11, 1964, declaring, in identical terms, that the plaintiff is entitled to a one-third share in the assets of the PL.AR. Firm and ordering, besides partition thereof, that "an account be taken of the movable and immovable properties of the joint Hindu family and the amounts due to the plaintiff from the joint Hindu family or from the first defendant", as well as inquiries "to ascertain what part of the amount found due to the plaintiff shall be paid from the joint Hindu family estate and what part thereof shall be paid by the first defendant." Upon appeal therefrom, the above orders were confirmed on March 14, 1966 by the Federal Court of Malaysia, with an amendment added thereto, namely: "that the issues adjudicated upon by the Supreme Court of India ..... be binding on the parties when taking accounts." Unfortunately, the order omitted to state from what date the accounting should commence, but probably it was considered superfluous to do so.

Upon an application made in due course for consequential orders and directions, Ismail Khan J. on March 21, 1968 directed that the first defendant do within two months file an account of his management of the PL.AR. Firm from the date of its commencement, which was August 22, 1926 by the judgment of the Indian Supreme Court. The appeal is by Arunasalam against this part of the order.

It is common ground that Mitakshara law is the personal law of the parties. It is also clear from the judgment of the Supreme Court of India that Palaniappa had been forced into litigation by reason of Arunasalam's claim that the PL.AR. firm belonged to himself solely and personally. Consequently it cannot now be gainsaid that

Palaniappa's coparcenary rights in the joint Hindu family estate from its very beginning had wrongly been denied him by Arunasalam as the karta or manager thereof.

The question now raised by the appellant is whether he is liable to render accounts from the commencement of business of the PL.AR. firm or from the date partition was decreed.

Mr. Atma Singh, counsel for the appellant, has argued with great persuasiveness that under Mitakshara law a member of a joint Hindu family cannot sue his karta for accounts prior to the date of a decree for partition. This is true because a coparcener "merely had a right to be maintained by the karta's absolute discretion": per Gratien J., see Attorney-General of Ceylon v. Ar. Arunachalam Chettiar & Ors. (1) Counsel contends that, as it was denied throughout that the respondent was a coparcener, proof whereof rested on the respondent, the latter had no status, nor any share in the estate, which is true, until proof was given to establish his status had a decree pronounced thereon. Ordinarily, severance of status under Mitakshara law takes place, where coparcenary is admitted, on the date a suit for partition was filed - which in this case, would be on April 2, 1951 - or, where the question of status and the definitive share of the claimant remains to be determined by the court, upon a final decree being passed establishing the claimant's rights. As the respondent was unsuccessful on the question of fact both in the Court of the Subordinate Judge at Devakottai and in the High Court of Madras, until he finally won on the issue in the Supreme Court in New Delhi, it was submitted that there was no severance until the decision in the final appeal, which was October 25, 1963. Accordingly there was no liability on the part of the appellant to account for his management prior to that date.

With respect I am unable to agree entirely with this contention. The salient fact is that, on the appellant's own admission, the respondent had been wholly excluded from participation in the

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(1) (1958) M.L.J. 39, 43

In the Federal Court

No.12

Judgment of Ong, F.J. 4th November 1968

(Continued)

enjoyment of any benefit whatsoever of what the court has held to be the common fund. By the very fact of his surviving the long and tedious litigation until decree the Supreme Court of India has now quantified his interest. The position would be vastly different had he died before the decree. Having succeeded to this extent, is he nevertheless to be denied all remedy for the past wrong done to him? The answer is to be found in the judgment again of Gratien J. quoted with approval by their Lordships of the Privy Council (ibid) as follows: "He could, if excluded entirely from the benefits of joint enjoyment, have taken appropriate proceedings against the karta....to obtain compensation for his earlier exclusion." With respect I regard this statement of principle as binding authority. Otherwise, assuming counsel's contention to be correct, the appellant could with impunity have played ducks and drakes with the joint property under his charge by reason of being absolutely accountable to no one. What if he had utilised the common fund, for instance, in purchasing property personally for himself? If the respondent is denied an account, how would it be possible to trace and follow such property as property to which the respondent is entitled to claim his share? Since the exclusion was clearly wrongful, to uphold the appellant's repudiation of liability to account during the period of exclusion would be tantamount to condoning a wrong. It is an axiomatic rule of law that a party cannot take advantage of his own wrong. The instant case cannot be an exception to the rule. Nor do I think there should be any grounds for reluctance on the part of the appellant to render full accounts if he has nothing to fear.

The broad principles relating to accounts by the karta are thus stated in Mayne's Hindu Law & Usage (11th Ed.) pp. 517-519 as follows:-

> "A member who seeks partition is entitled to an account of the family property as it stands at the date of partition, but is not entitled to open up past accounts or to claim relief against past inequality of enjoyment of the family property. All that he is entitled to is an account of the family property as it exists at the time he demands partition. If

he alleges and proves past acts of fraud or misappropiation on the part of the manager the rule would not apply. He would then be entitled to a full account for the whole period of management, the object in such a case being to ascertain not merely what the family property available for distribution is, but what it should be but for such acts of fraud, misappropriation or reckless waste; and in no case does it mean that the other members of the family are bound to accept the word of the karta as to what the divisible properties are. For particular properties which are proved to have come into his hands, the manager is bound to account and it is not enough for him to say that he has no longer got those assets. Cases may also occur where the enquiry as to what the family property is at the time of partition may necessarily involve the taking of past accounts and in such cases, the other members are entitled to ask for and the Court can order an account to be taken of the joint properties. But the taking of such accounts must proceed on the footing that its object is not to call upon the manager to justify past transactions, but to ascertain what is the joint property actually in his hands at the time of partition. As from the date when the right to partition accrues, however, the manager will be bound to render an account of the same nature as would be demanded from a trustee or agent. The time from which such an account can be demanded would seem to be the date of the severance. It will be the date of the first unequivocal declaration by a member of the family of his desire to enforce a partition. So, if a member of a joint family is wrongfully excluded from the enjoyment of the family property and subsequently establishes his position as a member, his right of action accrues at the date of his exclusion; and he will be entitled as from that time to an account such as would have to be rendered by a trustee."

In the Federal Court

No.12

Judgment of Ong, F.J. 4th November 1968

(Continued)

This, of course, does not mean accounting on the footing of wilful default, nor would there be any liability for loss by negligence. The karta's "absolute discretion" in the management of the joint estate draws a clear line as to the nature and extent of the accounts to be rendered: they are required because otherwise any inquiry to ascertain what properties belong to the joint estate would be frustrated.

It remains only for me to touch briefly on two other incidental matters. As to the question of limitation and the lex fori, I think it is sufficient to state that "no period of limitation....shall apply to an action by a beneficiary under a trust, being an action .... to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use." (See Section 22(1) of the Limitation Ordinance, 1953, reproducing S.19(1) of the English Limitation Act 1939).

As to who actually has possession of the relevant account books, it is implicit in the order made by Ismail Khan J. that he was satisfied they were and are in the appellant's possession. With respect I am in full agreement with him, for Exhibit 'A' annexed to the affidavit of Palaniappa sworn on December 28, 1967 shows that various books of relevant years, as well as other documents, produced in the Court of the Subordinate Judge at Devakottai, were duly returned to the appellant's advocate in India and acknowledged by the latter on August 18, 1966. It is, furthermore, difficult to imagine that the appellant, having claimed throughout that he was sole proprietor of the PL.AR. Firm, would have parted at any time with the possession of some material books, while retaining others, to any other person, least of all to his opponent. And it is to be remembered that they had been estranged since 1949, if not earlier.

Since the order of Ismail Khan J. has not been carried out by reason of this appeal, there will be an order extending the time for filing of accounts, as ordered, allowing the appellants three months from the date hereof to comply. The appeal is dismissed with costs; the deposit of

$500/- to be paid out to the respondent to account of his taxed costs.

(Signed) H. T. ONG
Judge
Federal Court,
Malaysia

Kuala Lumpur
4th November 1968

In the Federal Court

No.12

Judgment of Ong, F.J. 4th November 1968

(Continued)

In the Federal Court

No.12

Judgment of Ong, F.J. 4th November 1968

(Continued)

FEDERAL COURT CIVIL APPEAL No. X 21 of 1968

The following cases were cited in argument, which are not referred to in the Judgment of Ong, F.J.

1. C.M. Row's: Treatise of the Law of Injunctions by B.R. Verma, 3rd Ed. Vol.1, pp.839 and 840
2. Babburu Basavayya v. Babburu Guravayya, (1951) A.I.R. (M) 939 @ 939-40
3. T.S. Swaminatha Udayar v. T.S. Gopalaswami Odayar (1939) A.I.R. (M) 81 (b)
4. Baij Nath Prasad v. Ram Gopal Lachmi Narayan, (1939) A.I.R. (Cal) p.92 (a)
5. In re the estate of T.M.R.M.Vengadasalam Chettiar, deceased - (1941) M.L.J. 145
6. Sakharam Mahadev Dange v. Hari Krishna Dange, I.L.R. Vol.6 (1880-82) Bombay p.113
7. Jonnagadla Seethama v. Jonnagaala Veerana Chetty, (1950) A.I.R. (M) p.785 (c)
8. Mayne on Hindu Law (11th Ed.) p.517-519
9. Dicey's Conflict of Laws, (7th Ed.) p.1087
10. C.V. Vythianatha Iyer v. C.V. Varadaraja Iyer, (1938) A.I.R. (M) 841

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No.13
ORDER

In the Federal Court

No.13

Order 4th November 1968

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL No. X 21 of 1968
(Seremban High Court Civil Suit No. 34 of 1951)

BETWEEN

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Appellants

- and -

Ana Runa Pana Lana Palaniappa Chettiar
Respondent

(In the matter of Civil Suit No.34 of 1951
in the High Court in Malaya at Seremban

BETWEEN

Ana Runa Pana Lana Palaniappa Chettiar
Plaintiff

- and -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants)

Coram: AZMI, CHIEF JUSTICE, HIGH COURT, MALAYA
ONG HOCK THYE, JUDGE, FEDERAL COURT, MALAYSIA
SUFFIAN, JUDGE, FEDERAL COURT, MALAYSIA

IN OPEN COURT
this 4th day of November, 1968

O R D E R

THIS APPEAL coming on for hearing on the 24th day of September, 1968 in the presence of Mr.Atma Singh Gill of Counsel for the Appellants above-named and Mr. A.D.Rajah of Counsel for the

In the Federal Court

No.13

Order 4th November 1968

(Continued)

Respondent abovenamed AND UPON READING the Record of Appeal herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for judgment AND the same coming on for judgment this day in the presence of Counsel as aforesaid IT IS ORDERED that this Appeal be and is hereby dismissed AND IT IS ORDERED that the costs of all parties to this Appeal be taxed and be paid out of the estate AND IT IS FURTHER ORDERED that the First Appellant be granted three months from the date hereof to file the accounts AND IT IS LASTLY ORDERED that the sum of $500/- (Dollars five hundred only) deposited in Court as security for costs of this Appeal be paid out to the Respondent towards his taxed costs

GIVEN under my hand and the seal of the Court this 4th day of November 1968

Signed: A. W. AU
Chief Registrar
Federal Court, Malaysia

(L.S.)

In the Federal Court

No.14

Order granting Conditional Leave to Appeal to H.M. the Yang di-Pertuan Agong 10th February 1969

No.14

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL to H.M. the YANG DI-PERTUAN AGONG

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL No. X 21 of 1968

BETWEEN

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Appellants

- and -

Ana Runa Pana Lana Palaniappa Chettiar
Respondent

(In the matter of Civil Suit No. 34 of 1951 in the High Court in Malaya at Seremban

BETWEEN

Ana Runa Pana Lana Palaniappa Chettiar
Plaintiff

- and -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants)

Coram: AZMI, LORD PRESIDENT, FEDERAL COURT, MALAYSIA
GILL, JUDGE, FEDERAL COURT, MALAYSIA
LEE HUN HOE, JUDGE, HIGH COURT, IN MALAYA

IN OPEN COURT
This 10th day of February, 1969

O R D E R

UPON MOTION made unto Court on the 6th day of January 1969 in the presence of Mr. Atma Singh Gill of Counsel for the Appellants and Mr. A.D.Rajah of

In the Federal Court

No.14

Order granting Conditional Leave to Appeal to H.M. the Yang di-Pertuan Agong 10th February 1969

(Continued)

Counsel for the Respondent AND UPON READING the Notice of Motion dated the 16th day of December, 1968 and the supporting Affidavit of Mr. Atma Singh Gill affirmed the 12th day of December 1968 and filed herein, AND UPON HEARING Counsel aforesaid IT WAS ORDERED that the Motion do stand adjourned to the 10th day of February, 1969 AND the same coming on for hearing this day in the presence of Counsel as aforesaid AND UPON HEARING Counsel as aforesaid AND UPON MAKING ENQUIRIES from Mr. T. Chellappah, the Receiver appointed by Court as to the availability of funds for purposes of security in the event the said Appellants are ordered to pay the costs personally out of their share in the estate IT IS ORDERED that leave be and is hereby granted to the Appellants to appeal to His Majesty the Yang di-Pertuan Agong, against the Order of the Federal Court dated the 4th day of November 1968 upon the following conditions:-

(a) that the said Receiver do pay into Court a sum of $2,000/- forthwith and a further sum of $3,000/-, thus making a total of $5,000/- within three months from the date hereof on behalf of the Appellants for the due prosecution of the Appeal, and the payment of all such costs as may become payable to the Respondent above-named in the event of the Appellants abovenamed not obtaining an Order granting them final leave to appeal or of the appeal being dismissed for non-prosecution or of His Majesty the Yang di-Pertuan Agong ordering the Appellants abovenamed to pay the Respondent's costs of the Appeal as the case may be:

(b) that the Appellants abovenamed do within three months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England

AND IT IS LASTLY ORDERED that execution be stayed subject to the account books in the hands of the First Appellant belonging to PL.A.R. Firm being deposited in the Court, pending the disposal of the Appeal

GIVEN under my hand and the Seal of the Court this 10th day of February 1969

Signed: A. W. AU
Chief Registrar, Federal Court, Malaysia

(L.S.)

In the Federal Court

No.15

Order granting Final Leave to Appeal to H.M. the Yang di-Pertuan Agong 9th June 1969

No.15

ORDER GRANTING FINAL LEAVE TO APPEAL TO H. M. THE YANG DI-PERTUAN AGONG

IN THE FEDERAL COURT OF MALAYSIA AT KUALA LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. X 21 of 1968

BETWEEN:

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Appellants

- and -

Ana Runa Pana Lana Palaniappa Chettiar Respondent

(In the matter of Civil Suit No. 34 of 1951 in the High Court in Malaya at Seremban

BETWEEN:

Ana Runa Pana Lana Palaniappa Chettiar Plaintiff

- and -

1. Pana Lana Ana Runa Arunasalam Chettiar
2. Ana Runa Leyna Lakshmanan Chettiar
3. Meenakshi Achi (f) Defendants)

Coram: ONG HOCK THYE, CHIEF JUSTICE, HIGH COURT, MALAYA
ALI, JUDGE, FEDERAL COURT, MALAYSIA
YONG, JUDGE, HIGH COURT, MALAYA

IN OPEN COURT
this 9th day of June, 1969

O R D E R

UPON MOTION made unto Court this day by Mr. Atma Singh Gill of Counsel for the Appellants above-named in the presence of Mr. N.A.Marjoribanks of Counsel for the Respondent AND UPON READING the Notice of Motion dated the 3rd day of May

In the Federal Court

No.15

Order granting Final leave to Appeal to H.M. the Yang di-Pertuan Agong 9th June 1969

(Continued)

1968 and the supporting Affidavit of Mr. Atma Singh Gill affirmed the 3rd day of May 1969, and filed herein, AND UPON HEARING Counsel aforesaid IT IS ORDERED that final leave be and is hereby granted to the Appellants to appeal to His Majesty the Yang di-Pertuan Agong, against the Order of the Federal Court dated the 4th day of November 1968, and the execution thereon be suspended pending the disposal of the Appeal AND IT IS LASTLY ORDERED that the costs of this Motion be costs in the cause.

GIVEN under my hand and the Seal of the Court this 9th day of June, 1969

Signed: U AH WAH
Chief Registrar,
Federal Court,
Malaysia

(L.S.)

No.16

JUDGMENT

In the Supreme Court of India

No.16

Judgment 25th October 1963

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 441 and 442 of 1962

RM.P.KP.AR.PL.Palaniappa Chettiar — Appellant

- vs -

RM.P.KP.AR.Arunasalam Chettiar and others — Respondents

- and -

VICE VERSA

J U D G M E N T

SHAH J.

These two appeals arise out of a suit filed by one Palaniappa Chettiar - hereinafter called "the plaintiff" - for partition and separate possession of a third share in certain properties including the assets of a business conducted in the name of P.L.A.R. at Port Dickson in the Federated States of Malaya, on the plea that the properties belonged to the joint family of the parties to the suit, and for making provision for certain amounts due to the plaintiff from his father Arunasalam and other amounts spent by the plaintiff on behalf of the joint family. The parties are Nattukottai Chetties of Kandanoor in the District of Ramnathpuram in the States of Madras. The following genealogy explains the relationship between the parties:-

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

Palaniappa Chetty (senior) had two wives Sivgami and Valliamai. By Sivgami he had three sons, Ramaswami, Kumarappa and Lakshmanan and by Valliamai he had two sons Arunasalam (the first defendant in the suit out of which these appeals arise) and Chockalingam. The Plaintiff and the second defendant are the sons of Arunasalam - the plaintiff by his first wife Lakshmi (who died in 1922) and the second defendant by his second wife Meenakshi. The family carried on money-lending business at Kuala Lumpur and Port Dickson in the Federated States of Malaya in the name of K.M.P.L. Firm. Accounts in respect of the family business were maintained at the shops at Kuala Lumpur and Port Dickson, and copies of the accounts were sent to Kandanoor and were entered in what is called "the headquarters account" in the name R.M.P.K.P. In the course of the business at Kuala Lumpur and Port Dickson several immoveable properties, especially rubber estates were acquired by the family. The Kuala Lumpur branch of the business was closed sometime before 1925 on account of losses suffered in that business and the loss in that business was carried into the Port Dickson branch.

About the year 1923 division of the joint family assets between the first defendant and his brothers was commenced. The first to be divided were the assets at Kandanoor. Lands, houses, jewels and saman etc. at Kandanoor were valued and divided, and the five branches took over the shares allotted to them and only one house remained to be divided. The balance in the Kandanoor account valued at 1,42,865-70 Malayan dollars was then carried into the Port Dickson account. After dividing the properties at Kandanoor the partitions of the properties in Malaya was commenced. To facilitate the winding up of the affairs of the family and division of the assets at Port Dickson, an auction of the immoveables and enums (outstandings) was held on January 1, 1927, bidding being restricted to the five branches of the joint family. As a result of this auction Arunachalam - who will hereinafter be called "the first Defendant" - obtained a house and certain rubber estates of the aggregate value

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

of 96,000 Malayan dollars, and enums of the value of 24,050 Malayan dollars. He also took over liability for certain debts of the joint family, and thereby his share in the assets of the Port Dickson firm was equalised. The amount in the credit of the Kandanoor account was divided into five equal shares and the individual liability of each sharer for his withdrawals was then set off, and the balance was paid or recovered. On March 9, 1927 an agreement styled "award of Panchayatdars" was executed by all the principal members of the five branches recording the terms of partition of the properties of the family. It was recited therein, inter alia that the properties (of Port Dickson business) were jointly put up for auction and were sold to the highest bidder on January 1, 1927 and entries were made in the name of each of the purchaser in the books of account of the Port Dickson firm; that Kandanoor R.M.P.K.P joint family accounts were examined and the excess entered in the name of each in the Port Dickson account, and on taking account of the moveables the aggregate amount of 1,42,865-70 Malayan dollars found to the credit of the head-quarters account was equally divided into five shares each being 28,573-14 Malayan dollars; that 28,573-14 Malayan dollars payable for the share of the first defendant were adjusted towards his liability for 28,926-66 Malayan dollars in the Kandanoor account, and the balance of 353-52 Malayan dollars was collected from him in cash and credited and the account was squared up and closed.

Before the division of assets was completed, the first defendant started on August 22, 1926, a business in money-lending in the name of P.L.A.R. with the aid of funds withdrawn from the K.M.P.L. firm and other borrowings. Into this business were brought on January 3, 1927, the enums of the value of 24,050 Malayan dollars and immoveable properties of the value of 96,000 Malayan dollars as assets of the business. Copies of the day book entries of the PL.A.R. Business were sent from Port Dickson to Kandanoor and were duly entered in the books maintained at Kandanoor. The plaintiff was, it appears, residing principally at Kandanoor and attended to the posting of the entries, and certain transactions in India relating to the Port

Dickson business. He did for some time an independant business in "photography materials and stationery". In 1949 the relations between the first defendant and the plaintiff were strained, the first defendant having claimed that the P.L.A.R. business belonged to him exclusively. The plaintiff then filed in the Court of the Subordinate Judge, Devakottai, Suit No.70 of 1950 against Arunasalam, Lakshmanan and Meenakshi for determination of the properties moveable and immovable belonging to the joint family of himself and the defendants and for a decree directing that the amounts payable to him personally from out of the joint family funds be determined, and provision be made for taking accounts from the first defendant about the management of the joint family properties. The plaintiff claimed that he had advanced at the request of the first defendant Rs. 10,500/- which belonged to him and which the first defendant failed to repay. He also claimed that he had advanced Rs. 9,350/- on October 4, 1945 on the security of certain jewels pledged with him by the first defendant and thereafter at the request of the first defendant these jewels were handed over to the third defendant but the amount was not repaid to him. The plaintiff also claimed that he was entitled to "Asthi Fund" of Rs. 3,800/- and interest thereon which Fund was deposited in the year 1906 in the name of the first defendant according to the custom of the community for the benefit of the plaintiff's mother and male issue born of the marriage, which also the defendant had failed to repay. He also claimed that on the occasion of his mother's marriage with the first defendant, presents were made by her family which were called stridhanam and seermurai according to the custom of the Nattukottai Chetties, and that the amount was invested in the Kandanoor account in the first defendant's name, and that the first defendant had also the custody of the jewellery of the plaintiff's mother. In respect of this triple claim, the plaintiff said, the first defendant had agreed to pay Rs.30,000/- on October 21,1938, and out of which Rs.11,000/- only were paid by the first defendant on October 9, 1942, and the

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

balance remained payable to him. To the plaint were appended three schedules - Sch 'A' setting out the description of the immovable estate in District Ramanathapuram, Sch. 'B' of the jewellery, gold and silver ornaments, utensils, brass articles and furniture, and Sch. 'C' the estimated value of the movable and immoveable estate and outstandings of the P.L.A.R. firm at Port Dickson.

The plaintiff had by his plaint sought to combine with his claim for partition of the joint family properties, certain personal claims enforceable against the first defendant alone. Those claims were for payment to him of the "Asthi Fund" deposited for the benefit of his mother amounting to Rs.3,800/-, to which he claimed he had become according to the custom of the community entitled on the death of his mother, Rs. 9,350/- advanced by him on the pledge of jewellery which was returned, Rs.10,500/- due on loans advanced by him to the first defendant personally and Rs.9,000/- and interest thereon remaining due to him out of Rs. 20,000/- agreed to be paid by the first defendant on October 21, 1938, in respect of stridhanam, seermurai and jewellery. It was objected by the defendants in the Trial Court that those claims made the Plaint multifarious. The learned Trial Judge observed that the claims made by the plaintiff against the first defendant were "extraneous to a partition suit" and should properly be agitated by a separate suit and then proceeded to adjudicate those claims made by the plaintiff on their merits. In the High Court no objection was raised that in a single trial a claim for partition of joint family properties and claims which were personal to the plaintiff and enforceable against the first defendant alone, could not be combined. Before us also, no objections was raised about the maintainability of personal claims against the first defendant in a suit for partition of joint family estate. We will proceed to deal with those claims, though it appears to us, that the trial of those claims has introduced a certain decree of confusion, which could have been avoided.

The Trial Court awarded to the plaintiff a decree for partition of a third share in item 4 in Sch. 'A' and a thirtieth share in item 2 in Sch. 'A' subject to payment of a third share in the joint

familt debt amounting to Rs.2,270/- and interest thereon, and dismissed the rest of the claims. After observing that the Courts in India had no jurisdiction to adjudicate on the title to immoveables, which were the trading assets of a business carried on in a foreign territory, somewhat inconsistently the Trial Court held that the P.L.AR. business at Port Dickson belongs exclusively to the first defendant and the plaintiff, and the second defendant had no interest therein. The Court also held that the plaintiff failed to prove that the joint family possessed any jewellery described in Sch. 'B'. The plaintiff's claim for an account of the "Asthi Fund" of his mother amounting to Rs. 3,800/- and subsequent accretions thereto, and his claim for Rs. 10,500/- advanced by him to the first defendant, was rejected, and the claim for Rs. 9,350/- and interest due on the pledge of jewels was dismissed on the ground that unless the plaintiff returned the pledged jewels, he could not get a decree for payment of the amount advanced. The plaintiff's suit was accordingly dismissed, except to two items of immoveable property of small value.

In appeal, by the plaintiff, the High Court modified the decree of the Trial Court in the following five respects:-

(i) The first defendant was liable to account to the plaintiff for a third share in Rs.36,687-2-9 (being the expenses incurred by the first defendant for his marriage with the third defendant) and interest thereon.

(ii) The first defendant was also liable to account for the value of a third share in 21 enums "purchased by him at the time of partition" and interest thereon.

(iii) The first defendant was directed to pay to the plaintiff Rs.1,867-8-0 being the amount "spent by the plaintiff for the joint family during the absence of the first defendant in Malaya" and interest thereon.

(iv) The first defendant was directed to pay

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

Rs.11,564-4-9 with interest thereon from October 9, 1942. This amount was held payable to the Plaintiff as balance due under Ext. A-29.

(v) The plaintiff was declared entitled to fifteenth share in item 2 of Sch. "A" and a third share in items 3, 5 and 6 of that Schedule. The rest of the decree of the Trial Court was confirmed.

In his appeal No.441 of 1962 filed with certificate granted by the High Court of Madras the plaintiff has pressed his claim which was disallowed by the High Court. He claims:

(1) that the business carried on in the name of P.L.A.R. at Port Dickson was joint family business and he be awarded a third share in its assets;

(2) that his mother's "Asthi Fund" amounting to Rs.3,800/- be decreed together with the accretions thereto;

(3) that the house item 1 of Sch 'A' purchased in the name of the first defendant being property of the joint family and not of the third defendant held 'benami' for the first defendant, be included in the property to be divided;

(4) that the plaintiff be awarded a decree for Rs.9,350/- advanced by him on the pledge of jewellery by the first defendant which jewellery the plaintiff has returned to the third defendant at the request of the first defendant with interest thereon; and

(5) that the entire amount of Rs.10,500/- with interest thereon and not merely Rs.1,867-8-0 be awarded to him.

The defendant by their appeal No. 442 of 1962 contended in substance that the decree passed by the Court of first instance be restored, after setting aside the modifications made by the High Court.

We will deal with the question arising in the two appeals by this common judgment.

Not much need be said about the plaintiff's

claims under heads (3), (4) and (5). The house item 1 in Sch. 'A' was bought on October 10, 1931 for Rs.14,000/- in the name of the first defendant. The third defendant claimed that this house was bought by the first defendant "benami" for her with the aid of a fund belonging to her and that the joint family had no beneficial interest in the house. The first defendant supported the case of the third defendant. It is established on the evidence that Rs.10,500/- were set apart in 1923 as "Asthi Fund" for the benefit of the third defendant and the male children that may be born of her, and that this fund was available to the third defendant till the year 1931 when the income therefrom was assessed to income-tax in the assessment year 1931-32. It is true that the accounts of the persons with whom the "Asthi Fund" was deposited have not been tendered in evidence, nor is there any documentary evidence relating to the withdrawal of the "Asthi Fund". The house stood in the joint names of the plaintiff and the third defendant in the Municipal Register for four or five years before the date of the suit and that certain expenses were incurred in respect of the house out of the joint family funds. But the plaintiff in a statement on oath which he made before the Income-tax Officer, Karaikudi, on September 7, 1935 admitted that "the property at Kandanoor was purchased for Rs.14,000/- in the name of the first defendant with his Siriva Thayar's (step mother) money from out of Rs. 18,585/- which was in deposit in Rangoon ORM.M.SP.SY. firm and which was withdrawn and the said sale consideration of Rs.14,000/- has been paid and with the balance the expenses on registration and repairs etc. have been met. As the new house has been purchased with the aid of his step mother's money the said house does not belong to the joint family and the income from the new house should not be taken into account." It appears that in assessing the tax liability of the joint family, the income from the house item 1 Sch. "A" was sought to be included in the income of the family but on the statement made by the plaintiff no tax was levied on this income. There is again no entry for payment of Rs.14,000/- in the Kandanoor accounts

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

for purchasing the house. But relying on the admission made by the plaintiff, supported by two circumstances (i) that the third defendant in 1951 was possessed of a fund which she could draw upon for buying the house and (ii) the absence of any entry in the books of account of the family showing that the consideration was paid out of the joint family funds, the Trial Court and the High Court came to the conclusion that the plaintiff's claim for a share in the property must fail. In our view that conclusion is correct and the Plaintiff's claim for a share in the house item 1 Sch. 'A' must stand dismissed.

The claim for Rs.9,350/- advanced by the plaintiff on October 4, 1945 to the first defendant on the pledge of jewellery has also been rightly rejected. It is common ground that Rs. 9,350/- were borrowed by the first defendant from the plaintiff in 1945 on the pledge of certain jewels. The plaintiff says that he had at the request of the first defendant returned the jewellery to the third defendant, and that it was sold and the proceeds utilised for satisfying certain debts due by the first defendant. The plaintiff says that the first defendant was indebted to one A.R. Kasi Chettiar and the jewels pledged with him were sold by the third defendant for liquidating that debt. Reliance is also placed in support of that case upon letters Exts. A-22 and A-21 and A-12 between August-September 1949 about the sale of certain jewellery for satisfying the debt of A.R. Kasi Chettiar. Exhibit A-22 is a letter written by the third defendant in which she informed the first defendant that she had decided to see gold, jewellery and silver articles in the house to pay the debt of Kasi Chettiar and for that purpose arrangements were being made, there being in view of the insistant demands of the creditor no alternative but to sell the articles. There is another letter Ext. A-21 dated September 17, 1949 written by the husband of the third defendant's sister to the first defendant about the proposed sale of jewellery and some part played by the plaintiff Palaniappa in connection with the sale of the jewellery. In the letter Ext. A-12 addressed to the plaintiff the first defendant protested against

the sale of ornaments for inadequate price. These letters do refer to the necessity to raise funds by sale of jewellery and also to sale of some jewellery for meeting Kasi Chettiar's debt, but there is nothing in these letters which proves that the ornaments which had been pledged with the plaintiff were sold. The plaintiff had obtained from his father the first defendant before advancing Rs.9,350/- on the pledge of the ornaments an agreement in writing evidencing the transaction. If these ornaments had been returned to the first defendant or on his behalf to the third defendant before the money advanced by him had been repaid, some writing evidencing such return would have been obtained by the plaintiff. But no such writing is forthcoming. The plaintiff's case that he returned the ornaments rests solely on the reference to sale of some jewellery in 1949 in the three letters to satisfy debts due by the first defendant. The trial Court and the High Court did not accept the testimony of the plaintiff and dismissed his claim for payment of the debts due to him and we see no reason to differ from that view.

The Trial Court dismissed the Plaintiff's claim about the loans aggregating to Rs.10,500/- in its entirety. In appeal the High Court accepted the claim of the plaintiff in respect of the three items - Rs.1,000/-; Rs.717-8-0 and Rs.150/-. The High Court adopted the test that in respect of the expenditure supported by documentary evidence the plaintiff's claim should be decreed, but not the rest. The amount of Rs.1,000/- was proved in the view of the High Court to have been paid by the Plaintiff in connection with the first defendant's voyage to Malaya. This claim was supported by a document Ext.A-32 a letter written by the first defendant's sister-in-law's husband to the first defendant in which there is a reference to this amount of Rs.1,000/-. Rs.717-8-0 were paid by the plaintiff to a lawyer Mr. Ayyangar in respect of a pending litigation and Rs.150/- were given by the plaintiff to the second defendant for his school expenses. These disbursements are supported by documentary evidence. About the remaining items the plaintiff's testimony was held

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

not reliable. The question before the Courts below was one of appreciation of evidence and we would not be justified in reappraising the evidence on which the conclusion of the High Court to the extent to which it has disallowed the claim of the plaintiff is founded. The defendants by their appeal challenged the decree of the High Court awarding Rs.1,867-8-0 to the plaintiff, but at the hearing counsel for the defendants has abandoned that part of the appeal.

Then survive in the plaintiff's appeal two questions - one relating to the plaintiff's share in the assets of the P.L.A.R. firm at Port Dickson on the footing that it was a joint family business and the other relating to the plaintiff's share of the "Asthi Fund" of his mother amounting to Rs.3,800/- and the accretions thereto.

In regard to the first claim a difficulty has to be faced at the threshold. The P.L.A.R. business was carried on in the Federated States of Malaya - a foreign State. That business has certain assets including immovables, and to immovable properties not situate in India by the rules of private International Law which have been recognised by the Courts in India, no claim may be maintained in a Court in India for partition. The movables are however governed by the law of the domicile of the parties and the Courts in India would be competent to grant a decree for partition which may be enforced by a personal order against the defendants. The Trial Court observed that the plaintiff could not in the suit in a Court of India get a decree for partition of the assets of the P.L.A.R. firm at Port Dickson but it still proceeded to consider the plaintiff's claim on merits and rejected it. The plaintiff had instituted another suit being Suit No.34 of 1951 in the Supreme Court of the Federation of Malaya in the High Court at Seremban for a declaration that the plaintiff had interest in the P.L.A.R. firm at Port Dickson as a member of a joint Hindu family consisting of himself and the defendants and for partition of the assets of the joint family. In that suit, on the defendant Arunachalam undertaking to abide by any final decree or decision of the Courts in India in the issue arising in O.S.No.70 of 1950 in the

Court of the Subordinate Judge at Devakottai as to whether the firm PL.A.R. at Port Dickson and the assets thereof belong to a Hindu Joint Family as alleged by the plaintiff or are the separate property of the defendants as alleged by them, the Court ordered that all further proceedings be stayed until the final determination or abandonment of the plaintiff's appeal against the judgment in the Devakottai Suit. Ordinarily the Courts in India have, by the rules of private International Law, no authority to adjudicate upon title to Immovable property situate outside India. But the defendants having agreed in suit No. 34 of 1951 before the Supreme Court of the Federation of Malaya, the parties applied by C.M.P. No. 6218 of 1956 in the High Court at Madras that the issue relating to the title to the assets of the P.L.A.R. firm be decided. The High Court was therefore expressly invited by the parties to give a decision on the merits of the dispute in the light of the evidence led before the Trial Court and the High Court agreed to decide the disputed questions. Before us also, counsel for the parties have adopted the same attitude, and have asked us to decide the appeal on the merits, including the dispute as to title to immovables in Port Dickson.

The P.L.A.R. business was started on August 22, 1926. The first defendant was then a junior member of the joint family of himself and his brothers and all the assets of his branch were with the joint family. The business was started with capital withdrawn from the K.M.P.L. Port Dickson. Exhibit B-1 consists an extract from the current ledger maintained by K.M.P.L. Port Dickson of the nadappu (current) dealings of RM.P.KP.AR. i.e. the first defendant - In that account there are four debit entries of 6,500/- Malayan Dollars dated August 31, 1926; 500/- Malayan Dollars dated September 1, 1926; 2,750/- Malayan Dollars dated October 10, 1926 and 8,450/- Malayan Dollars dated November 18, 1926. These amounts are then taken by posting adjustment entries into the P.L.A.R. nadappu (current) accounts. The first defendant had also borrowed from N.A. of Malacca on September 27, 1926 and from AL.A. and AR.S. 6,000/- Malayan Dollars each on November 13, 1926.

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

There are also entries of other borrowings. On January 3, 1927 the account is credited with 24,050/- Malayan dollars being the value of 21 enums. taken over by the first defendant, and 96,000/- Malayan dollars being the value of the immovable property.

It is common ground that the realizations out of the emuns and the income of the immovable properties were brought into the P.L.A.R. Account and utilized for the business. The plaintiff's case is that the business P.L.A.R. was started with the aid of joint family funds, obtained from K.M.P.L. Port Dickson and into that business property which was admittedly joint family property was brought. The assets of the business must therefore be regarded as of the joint family of the parties to the suit, and the character of that business was not altered merely because some loans were borrowed from outsiders. Alternatively, it was submitted that even if it be granted that the business was commenced with borrowed funds, because of the subsequent conduct of the first defendant in carrying on the business with the assets obtained from the joint family in the Partition proceedings and in adopting the business as a family business it acquired the character of joint family business.

Whether a new business commenced by the manager of a joint Hindu family is his separate business or business of the joint family of the manager and the other coparceners must depend upon the circumstances of each case. If the other coparceners are adult members, the business may have that character because of the consent express or implied of such coparceners to the commencement of the business. Where the business is started with the aid of joint family funds or into the joint family business are brought subsequent to the commencement other funds for the benefit of the joint family, an inference that the business was commenced as or has become joint family business may readily be made. If the other members adopt with the consent of the manager the business as a joint family business by enjoying the benefit of the business, the business may be regarded as a joint family business. The question in each case is not of any presumption, but of inference to be drawn from the conduct of the manager and other coparceners. The

Nattu Kottais as a community take to money-lending as a profession. Palaniappa (senior) was doing business in money-lending in partnership with a stranger to the family. The business was discontinued on the death of Palaniappa (senior) in 1911, and his five sons started a new money-lending business at Kuala Lumpur and Port Dickson in the name of K.M.P.L. It is common ground that this new business was a joint family business. The Kuala Lumpur branch of the business was continued till anout the year 1925 when that business suffered a loss and the Port Dickson business continued as a joint family business till March 1927. In view of the impending partition of the joint family and the closure of the K.M.P.L. the first defendant started a new business in money-lending also at Port Dickson. A part of the assets of that business consisted of the enums (outstandings) obtained from the K.M.P.L. in the partition proceedings. The immovable properties of the K.M.P.L. which came to the first defendant were also brought into the P.L.A.R. business. These were initially the properties of the joint family of the first defendant and his brothers and they were utilised for commencing and consolidating the business, without even maintaining their separate identity. The amounts which were obtained by the first defendant from the K.M.P.L. Port Dickson were initially entered in the current (nadappu) account of the first defendant in the name of RM.P.KP.AR's account and were then transferred to the P.L.A.R. account. Prima facie, this utilisation of funds of the larger joint family for commencing and conducting the P.L.A.R. Port Dickson business raise a strong inference that P.L.A.R. business was intended to be a joint family business of the parties to the suit. But it is urged that the enums and the immovable properties were not allotted to the first defendant at the partition between the five branches as his share of the joint family property, but were bought by him from the family, even as a stranger may, and had therefore in his hands at the time of acquisition lost the character of joint family property, and a business commenced with funds borrowed from K.M.P.L. and others by pleading his personal credit, and conducted with the aid of the property purchased by him, could not acquire the character of joint family property.

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

In substance the plea is that the funds withdrawn from the K.M.P.L. Port Dickson by the first defendant were loans advanced to him on his personal security and that these loans were taken into account in settling the accounts of the K.M.P.L. firm at Port Dickson in the course of winding up, and the enums and the immovable properties which he obtained because of the acceptance of his bids were in truth purchased from the K.M.P.L. and were not allotted to him as his share on partition.

Parties are agreed that the value of the total assets of the K.M.P.L. firm including the outstandings and the immovable and movable properties was approximately equal to the total liability of the firm and therefore in effecting a partition the assets and outstandings, to make an equitable partitions, had to be so made, that each sharer took over debts equal to the value of the property allotted to him. This is also supported by the fact in Ext. A-1, there is no division of any amount found to the credit of the K.M.P.L. Port Dickson account. In the course of the winding-up, the first defendant, as it will presently appear, took over certain properties movable and immovable, and undertook liability for discharging debts of the business of equal value. This has a vital bearing in ascertaining the true character of the scheme devised for winding up the business by auctioning the assets and allotting debts due to outsiders to the members of the family.

The amount due to the first defendant in his nadappu (current) account amounting to 42,681-73 Malayan dollars was credited to the K.M.P.L. account. The debts which he undertook to discharge were also credited to him in his account. Against this were debited the value of the enums, and the immovable properties, and the amounts withdrawn from the K.M.P.L. firm. But the value of the property debited in the account and the withdrawals considerably exceeded the amount credited from his personal account. It is worthy of note that the amount standing to the credit of the first defendant was wholly insufficient to discharge the liability for the value of the properties taken over by him, and that liability was discharged by giving credit for the debts which

were admittedly joint family debts. It must also be remembered that for discharging these debts the estate of the plaintiff was liable, as the arrangement made by the members of the family in the course of partition proceeding could not bind the creditors, and there is no evidence that the creditors agreed to accept the personal credit of the first defendant for satisfaction of the debts. Bearing this in mind it is necessary to examine the argument advanced on behalf of the first defendant that under Ext. A-1 i.e. the award of the arbitrators properties which came to the first defendant were sold by the joint family to him in his individual capacity and that the transaction did not amount to an allotment of joint family property to the first defendant in the course of partition.

The family possessed immovable and movable estate at Kandanoor and carried on money-lending business at Kuala Lumpur and Port Dickson. At Kandanoor there were immovable and movable properties of the joint family of the first defendant and his brothers where the accounts in respect of the Malayan business were maintained, but it does not appear that any substantial business was being carried on at Kandanoor. After the Kuala Lumpur business was closed sometime before or in the year 1925, the losses were carried into the Port Dickson K.M.P.L. firm account. The partition of the Kandanoor properties was started in 1923 and it was carried on till the year 1926. Properties were valued and adjustments were made amongst the various co-sharers. The account of Kandanoor was then taken into the Port Dickson K.M.P.L. account. It was found that 1,42,865-70 Malayan dollars stood to the credit of that account. That was divided into five shares - each share being allotted to one of each branch of the five sons of Palaniappa Chetty (senior) and each sharer was awarded 28,573-14 Malayan dollars. But it was necessary to make adjustments, in the light of the dues on account of withdrawals made from time to time according to the usual practice of Nattukottai Chetti community in their respective individual accounts by the five brothers. In the account of the first defendant for his withdrawals which commenced in the year

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

1902 there was a liability in 1923 of Rs.12,500/- On October 14, 1925 an amount of Rs.8,000/- was debited in that account, Rs.7,000/- being in respect of a house purchased in the name of the first defendant and Rs.1,000/- for a diamond ring. Another amount of Rs.750/- was also debited on the same date in respect of the purchase of 2½ carats of diamonds. On February 12, 1927 Rs.36,685-10-9 inclusive of interest were debited for the expenses incurred for the second marriage of the first defendant. A substantial part of the same was given as bride price and the balance was debited as interest on the amount from September 22, 1926 to December 30, 1926. This made a total of Rs.68,789-10-0 which at the rate of Rs.155/- for every 100 Malayan dollars amounted to 44,380-40 Malayan dollars. This amount was carried into the RM.P.KP.AR's (first defendant) account at Kandanoor. Against that amount were credited certain amounts to which the first defendant was entitled i.e. his mother's jewellery and the balance of 28,926.66 Malayan dollars was found due by him. The first defendant was therefore found entitled to receive from the family for his fifth share an amount of 28,573-14 Malayan dollars. The first defendant was also a debtor to the joint family and he had to pay 353-52 Malayan dollars to square up his liability. The debts due by the first defendant in the Kandanoor account were therefore set off against the share of the first defendant's branch in that account. No part of the assets out of the Kandanoor account was taken into the P.L.A.R. account, and the liability of the first defendant for his dealings was also discharged independently of the P.L.A.R. business.

The position about the enums and the immovable was somewhat different. The first defendant was debited on January 3, 1927 with 24,050 Malayan dollars as value of 21 enums and 96,000 Malayan dollars as the value of the immovable properties. He was given credit for 42,681-73 Malayan dollars in respect of certain amounts due to him in his personal account and he was also given credit for debts of the family which he had undertaken to pay. But the first defendant had obtained between the months of September and November 1926, 19,000 Malayan dollars from the K.M.P.L. firm. It also appears from Ext.B-1

the account of P.L.A.R. Nadappu dealings, that he had borrowed further amounts of 20,100 Malayan dollars and deposited 7,500 Malayan dollars in the month of December, 1926. These were all out of the K.M.P.L. firm account at Port Dickson.

We may now proceed to examine the character of the interest which the first defendant acquired in the enums and the immovable properties received by him under the award dated March 9, 1927. In Ext. A-1 which records the terms of what is called "a Panchayat award relating to the Port Dickson, Kuala Lumpur K.M.P.L. firm and Kandanoor RM.K.P. joint family account", it is recited in the preamble that it contained particulars of partition effected on the 26th day of Masi of the year Akshaya (March 9, 1927) at Kuala Lumpur after appointing Panchayatdars etc. In cl. (1) the names of the five branches between whom the partition was to be effected are set out and then it is recited that the representatives of the five branches were present and "they jointly put up for auction sale the properties and enums (constituents) mentioned in the accounts of the aforesaid Kuala Lumpur K.M.P.L. firm and Port Dickson K.M.P.L. firm and sold then for the highest amount on the 1st day of January 1927, entries have been made in the name of each in Port Dickson firm". Paragraph 2 recites that the Kandanoor RM.P.KP. joint family accounts have been looked into and the excess or otherwise entered in the name of each in Port Dickson firm. Paragraph 3 refers to the closure of the Kuala Lumpur firm and the posting of entry about the debts of that firm in the Port Dickson account. Paragraph 4 deals with the division of the assets of the headquarters account, and the allotment of equal shares in the amount standing to the credit of the headquarters account. Paragraph 6, 7, 8, 9 amd 10 deal with the allotment of the share of 28,573-14 Malayan dollars to each branch and the adjustment of the liability of each branch against that amount. Paragraphs 11, 12 and 13 deal with the division of certain properties at Kandanoor which had not been previously divided and for the management of the property held in common which had not been previously divided. Provision is made in paragraphs 14 to 18 for charitable endowments and maintenance

In the Supreme Court of India

No.16
Judgment 25th October 1967

(Continued)

of a Siva temple. Various adjustments have been made in paragraphs 19 and 20. The first defendant Arunasalam is by paragraph 22 authorised to take necessary steps for recovery of the outstandings allotted to him and by paragraph 25 the books of account of the Port Dickson joint family firm for the period from November 1, 1922 up to that date were handed over to him. Paragraph 27 recites that as the partition has been effected after looking into the accounts of the joint family firms and headquarters everything has been settled with regard to the joint family items and no claim of any sharer remained against another.

Exhibit A-1 purports to be an award recording the particulars of partition. Indisputably the Kandanoor properties were divided and the amount standing to the credit of what account was partitioned in equal shares. Provision was made in Ext. A-1 with regard to the garden in paragraph 11 for partition and common enjoyment in respect of the properties mentioned in paragraph 13. Paragraph 7 also refers to the arrangement as one of partition. In making the partition at least of the enums, the method of dividing each individual item into five equal shares would have been impracticable. The alternative method of valuing the properties of the business, and of allotting shares in property of a value equal to the aliquot share in the aggregate value was not followed. But the properties were auctioned amongst the members of the family and were allotted to the highest bidder. But this method or allotment after auction amongst the members of the family was adopted to ascertain the value to be ascribed to the diverse items of properties of the family. Adoption of this method of ascertaining the value of the properties, did not alter the nature of the scheme for winding up the affairs of the business. The assets being approximately equal in value, as it is conceded, the highest bidder had to undertake to pay debts of corresponding value. Instead of valuing the properties through valuers or by mutual consent, the value of individual items of properties was ascertained by finding out how much the members of the family were prepared to offer, and on the basis of that

valuation the division was made. Adoption of a scheme of auctioning the properties was merely for assessing the value of the properties. By accepting the highest bid the value of the property was assessed at the amount of the bid. By offering the highest bid for an item of property the sharer offering the bid became pre-emptively entitled to get the property, but he also was obliged to take upon himself the obligation to pay debts of the family of corresponding amount, snd thereby the shares of the different branches were in a sense equalised. In its essence the scheme was not for sale of the property by auction, and division of the realizations; it was a scheme for division of the property, in which the highest bidder obtained an item of property for the value bid by him, coupled with an undertaking to pay debts of a corresponding amount. We are therefore unable to agree with the contention of counsel for the first defendant that the scheme of auction and allotment of property amounted to sale of the joint family property and by virtue of the allotment consequent upon the auction and the acceptance of the value offered, the nature of the property was fundamentally altered and that it became in the hands of the offer or his separate property in which his own sons were not interested.

It is somewhat unfortunate that the attention of the Trial Court was not invited to the true nature of the award Ext. A-1. The reason is not far to seek. The plaintiff had filed a suit in the High Court at Seremban for partition and separate possession of his fifth share in the properties in the Federated States of Malaya. That Court was competent to adjudicate upon disputed question of title to immoveables in Malaya, and the Subordinate Judge, Devakottai had no jurisdiction to adjudicate upon any disputed question of title to those immovables. It was after the suit was decided by the Trial Court that the parties agreed before the High Court at Seremban that the entire dispute may be decided in the Courts in India and the parties agreed to abide by the decision of the Indian Courts. At the hearing of the appeal

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

from the judgment of the Trial Court, the High Court did not also proceed either to ascertain the true nature of the document Ext A-1 or to take into consideration the character of the immoveable properties of the value of 96,000 Malayan dollars allotted to the first defendant and the debts of the firm transferred to him to adjust his liability as against the value of those immoveable properties and the enums. Even in respect of the enums the High Court merely observed after referring to the elaborate arguments of counsel for the plaintiff and counsel for the defendants that the plaintiff's claim that the P.L.A.R. firm was started with the nucleus of the joint family could not be accepted, for to do so would in substance be depriving the first defendant of the stridhanam amounts of his mother and grandmother, and not to regard the business as joint family business would mean the extinction of the plaintiff's interest in the price of 21 enums rendering him liable for the expenditure incurred on the second marriage of the first defendant which was not binding upon him. The High Court accordingly thought that "the result has to be a via media", and in that view the PL.A.R. firm must be deemed to be the first defendant separate concern started with sums borrowed as well as with the stridhanam amount of the first defendant's mother and as the first defendant had invested the value of 21 enums for which he had given a bid at the auction and which he obtained, the enums must be regarded as joint family assets and the first defendant must be held bound to account for the same and give to the plaintiff his third share therein. In our judgment, this was not a permissible approach in dealing with the claim made by the plaintiff. It was the plaintiff's case that the P.L.A.R. firm was either started with the aid of joint family funds or had in fact become joint family firm because into that business were brought the assets of the joint family belonging to the plaintiff and the defendants. It was the first defendant's case that the business was his exclusive business commenced and carried on without any detriment to the joint family estate. If into the business conducted by the first defendant were brought assets of the joint family not as a borrowing but incorporated therein, the inference that the

joint family was merely a creditor of the separate business could not be made. The first defendant was, in the view we have taken, allotted property which originally belonged to the joint family of the first defendant and his brothers of the substantial value of 1,20,000 Malayan dollars out of K.M.P.L. firm at Port Dickson. This property received on partition by the first defendant on behalf of his branch must be regarded as property of the joint family of the first defendant and his sons. The first defendant had undoubtedly to satisfy the debts due by the firm which he had undertaken to pay. But those were the debts due by the joint family and they were as much binding upon the interest of the plaintiff in the joint family property as of the first defendant. The true effect of the arrangement was therefore that the first defendant obtained joint family property of the value of 1,20,000 Malayan dollars and he rendered himself liable to discharge debts due by the firm of approximately the same amount. The property received by the first defendant was joint family property and it is difficult to hold that the business which he carried on with the aid of that property - and on that part of the case there is no dispute - was not joint family business. It may be noticed that substantial amounts were withdrawn by the first defendant from the K.M.P.L. firm between November 30, 1926 and December 22, 1926. These amounts are debited in the P.L.A.R. Nadappu dealings and they have also been taken into account in allotting to him debts of the family to equalise the shares of the different branches. These withdrawals cannot be regarded as mere borrowings on the personal security of the first defendant. As these withdrawals were also taken into account in assessing the amount payable by him to equalise his share, the amounts may be regarded as retaining the character of joint family property.

Next we come to the question whether the amount of 42,681.73 Malayan dollars was the separate property of the first defendant. That a part of it is of the separate ownership of the first defendant cannot be disputed. It appears

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

that the first defendant had a thavanai - Deposit Account - since before the year 1922. In Ext.B-1 on November 21, 1922 he had to his credit an amount of 12,120-46 Malayan dollars. On December 24, 1924 this amount after adding the interest was 14,830-57 Malayan dollars. This amount was taken from the deposit account into the nadappu account of the first defendant. Then there is a credit item of 2,321.28 Malayan dollars in respect of his mother Valliamai's account deposited through the Kuala Lumpur firm. That may be regarded as the separate property of the first defendant. There is then a credit item for 16,159-28 Malayan dollars which is stated to be in respect of the salary due to the first defendant for attending to the business. No previous accounts in respect of these agencies were produced, and the testimony of the first defendant that it was due to him as salary is somewhat vague and not reliable. There is a credit entry on January 22, 1925 in respect of 12,868-87½ Malayan dollars. It is the case of the first defendant that this credit entry of 12,868-87½ Malayan dollars was in respect of the amount obtained from the T.A.R.C.T. firm and deposited in the K.M.P.L. Kuala Lumpur and then carried on the closure of that business into K.M.P.L. Port Dickson. It is admitted by the first defendant that this amount represented the sum total of Rs.3,800/- credited as "Asthi fund" and the Stridhanam and vevu or Seermurai amounts of his first wife. He will presently deal with the nature of the Asthi Fund of Rs.3,800/-. So far as the stridhanam and the vevu amounts are concerned, it is now conceded that the plaintiff was the owner of that fund. But assuming that the amount of 42,681-73 Malayan dollars credited in the P.L.A.R. nadappu (current) account belonged exclusively to the first defendant, an inference that because this amount was utilised in conducting the business that the business was the separate business of the first defendant cannot be made.

The P.L.A.R. business was started with funds withdrawn from the joint family. Practically the first entry made in the books of account with the aid of which the business has been commenced, was from the K.M.P.L. Port Dickson firm. The enums and the immovable properties were also brought into the

business on January 3, 1927, and they became part of the assets of the business. We are, for reasons already set out, unable to hold that these items were purchased by the first defendant for and on his own behalf. They were properties which were allotted to the first defendant under a scheme of division adopted by the members of the family for partitioning the property, and as against the allotment of those properties the first defendant has undertaken liability to pay the joint family debts.

In considering whether the business started by the first defendant at Port Dickson was of the joint family of himself and his sons, besides the fact that the business was of the same type as was originally carried on by the larger joint family in the name of K.M.P.L., and that it was commenced and consolidated with the aid of funds of the joint family of K.M.P.L. there are two other pieces of evidence which must be taken into consideration. Certain letters written by the first defendant to the plaintiff who was at Kandanoor disclose the first defendant's attitude towards the P.L.A.R. business. Out of these letters one is of the year 1934 and the rest are of the year 1947 and onwards. In these letters the first defendant kept the plaintiff informed about the dealings and transactions of the P.L.A.R. business, especially about the management of the rubber estates and has given diverse directions about entries to be posted in the headquarters account. In many of these letters the estate and the business are referred to as "our business" and "our estate". Exhibit A-13 dated February 2, 1934 is a letter written by the first defendant to the plaintiff with which were enclosed the copies of the day book of the P.L.A.R. firm transactions. In that letter directions were given by the first defendant about cashing certain hundis and making payment of certain debts. The plaintiff has also been asked to receive a quantity of paddy from A.RM.Ramaswami Mudaliar. In the letter Ext.A.-3 dated February 20, 1947 the first defendant wrote to the plaintiff informing him that "our estates are such overgrown with lalan (weeds). Only if they are removed, trees will grow well and rubber juice can be extracted."

In the Supreme Court of India

No.16

Judgment 25th October 1963

He then bewails that large amounts will have to be expended for clearing the weeds and assures the plaintiff that he will get the work done at a moderate expenditure. Directions have been given in that letter about certain payments to be made coupled with a request to attend to the prosecution of a suit pending in the Civil Court at Devakottai. In Ext.A-2 dated March 29, 1947 there is a reference to the proposed institution of a suit in Malaya in which the costs were estimated at about 10,000 dollars. The plaintiff is then informed by the first defendant that if rubber was extracted only from "our estate", a sum of 200 dollars may have to be spent, but in view of the prevailing low prices of rubber it was not desirable to do so. The first defendant then writes that it would not be 'beneficial to extract the rubber after removing the weeds' and proceeds to say that "we might even purchase other estates if we liked, we did not want to clear our other estates". The first defendant also informed the plaintiff that he desired to sell away the business and to receive as much as possible as soon as the moratorium was removed. In the letter Ext. A-4 dated April 22, 1947, he is bewailing the considerable expenditure required to be incurred for weeding and pruning the rubber estates. He has also informed the plaintiff that arrangements were being made for borrowing a loan of 5,000 Malayan dollars from a Chinese money-lender and if that were obtained, he would get the wild shrubs and weeds removed and retain the balance for necessary expenses and even send a part of it to India. Similarly in letter Ext. A-5 dated June 1, 1947 with which the copies of the day books from February to May 1947 were enclosed the plaintiff was informed that if the accounts were looked into "the money we are getting, can be seen." He has further stated that there was great financial stringency in Malaya and it was not possible to borrow loans. There is also a note at the end of the letter in which it is stated "We cannot own and manage estates hereafter". In letter Ext. A-6 dated July 4, 1947 there was also a reference to some financial transactions and the refusal of the Chinese money lender to advance monies, and to some petition for payment of compensation for loss sustained in 40 acres of rubber estates. The

other letters proceed in the same vein: it is not necessary to set out in detail the contents thereof. It is sufficient to observe that the contents of the letters indicate a clear admission that the plaintiff was interested in the business carried on in Malaya. The business and estate were frequently referred to as "our business" and "our estate", whereas in respect of matters which were personal to the first defendant the first person singular was used.

There is also the evidence about the assessment to income-tax of the income from the P.L.A.R. business. It appears that originally the income of the business was assessed in India as the income of the individual business of the first defendant, but it is common ground that in the assessment year 1934-35 the income from the P.L.A.R. firm at Port Dickson was assessed in the hands of the first defendant in the status of a Hindu undivided family. Exhibit A-52 is the order of assessment dated March 31, 1941 for the assessment year 1940-41. There is a similar order of assessment for the year 1941-42 Ext. A-54 and for the year 1942-43 Ext.A55. In all these cases, assessment of the first defendant is made not as an individual but as a Hindu undivided family. Even as late as August 8, 1950, by Ext. A-56 the Income-Tax Officer had called upon the first defendant to prepare a true and correct statement of the family's total income and total world income during the previous assessment year. The income of the business having been originally assessed as the income of an individual, it could not without some proceeding taken by the first defendant be assessed thereafter as income of a Hindu undivided family. The first defendant has not been able to give any rational explanation about the circumstances in which the change came to be made. He merely stated that he was assessed as a joint Hindu family; but that assessment was not correct and that he had filed an application to the Income-Tax Officer stating that by mistake he had been described as such and that it should be rectified, and that the application was pending on the date when he was examined in Court. In cross-examination he stated that the application for rectification of the income-tax assessment from

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

the Hindu undivided family to an individual was made two or three years ago i.e. in the year 1950. He was unable to give the exact date of the application and even to produce a copy of the application made to the Income-Tax Officer. This evidence also supports the case of the plaintiff that the income from the business was regarded as income of the joint family.

Mr. Kesava Ayyangar appearing on behalf of the first defendant submitted that an admission before the Income-Tax Authorities that the income of the P.L.A.R. was for purposes of assessing income-tax to be regarded as income of a Hindu undivided family is not conclusive or even of much evidentiary value, and the true character of the business must be adjudged in the light of other circumstances. Counsel relied upon Malik Harkishan Singh v. Malik Pratap Singh and others (1) in which the Privy Council observed at p.190 that:

> "It is by no means a rare thing that a person makes a statement that he a member of a joint with his relative, but has reason of his own for making that statement. It is not his statement, but his actings and dealings with the estate, which furnish a true guide to the determination of the question of the jointness or otherwise",

and upon Alluri Venkatapathi Raju and another v. Dantuluri Venkatanarasimha Raju and others (2) containing similar observations. Where a person with a view to obtain benefit under the Indian Income-Tax Act by getting himself assessed not as an individual but as a joint Hindu family, an inference that the statement made by him on oath is true may reasonably be made. The admission however is not conclusive: it must be taken into consideration in the light of other evidence. Whether an estate with regard to which a person on his own request or with his consent has been assessed as a member of the joint Hindu family is estate of the joint family must be decided on a conspectus of all his actings and dealings with the estate which furnish a true guide for the determination of the question and

(1) A.I.R. (1938) P.C. 189
(2) L.R. 63 I.A. 397

not solely on the admission, for such an admission by itself raises no estoppel against the person making that statement.

It is somewhat unfortunate that the accounts of the P.L.A.R. firm have not been produced. It is said that the accounts were produced in the suit in the High Court at Seremban. But from the statements of account Exts. B-14 to B-18 read in the light of the entries posted in K.M.P.L. firm Port Dickson, the inference is inevitable that the business was started with the aid of funds which were taken from the K.M.P.L. firm and it was consolidated with the aid of funds which were obtained in the ultimate allotment on partition of the K.M.P.L. firm. The High Court was moved to hold that the business was the separate business of the first defendant merely because the first defendant had brought into the business an amount of 42,681-73 Malayan dollars. We have already dealt with this amount in some detail. As to the amount of 12,868-87½ Malayan Dollars there is an admission made by the first defendant that in that amount the plaintiff was interested. About two other items, there is no clear evidence whether they were the exclusive property of the first defendant or whether the plaintiff was interested in them. The remaining two items do appear to be the separate property of the first defendant, the amounts having been obtained from the stridhanam of his mother. But the circumstances that a part of the amount with the aid of which the business was conducted belonged exclusively to the first defendant will not be a ground for holding that the P.L.A.R. business was the exclusive business of the first defendant. The amount of 42,681-73 Malayan dollars has not been kept separate. It has been mixed up with the assets which were obtained on allotment of partition of the joint family of K.M.P.L. and it would be difficult to regard solely relying upon the circumstances that these 42,681-73 Malayan dollars assuming that they belonged exclusively to the first defendant, that the P.L.A.R. firm started at Port Dickson belonged to the first defendant exclusively.

The learned Trial Judge in paragraph 46 of his judgment observed:-

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

"That the P.L.A.R. concern was the first defendant's own separate business was recognised in the partition between the members of the family and excluded from the partition by the award, Exhibit A-1 The first defendant has been throughout carrying it on as his separate business. He was frequently going to Malaya staying there for months together and conducted business personally, supervised it and used his skill and exertion in the carrying on of the business. It was never blended with any joint family property. It was never intended by the first defendant to be so blended."

In so observing the learned Trial Judge has, in our judgment, seriously erred. He has failed to give due effect to the bringing into the business of assets of substantial value which the first defendant got on the partition of K.M.P.L. Business and the subsequent conduct of the first defendant. The High Court was persuaded to hold that the business as the separate concern of the first defendant primarily on the circumstances that a large amount of money belonged to the first defendant as stridhanam amount which his mother had invested in the main family business of K.M.P.L. and which was available to the first defendant and was brought in the P.L.A.R. business on November 30, 1926. They observed after setting out in detail the arguments advanced on behalf of the plaintiff and the first defendant that:-

"We are inclined to agree with the learned counsel (for the first defendant) that excepting the entry with regard to the expenses of the second marriage of the first defendant which was debited even before the firm was started the other small amounts drawn could not have been made the nucleus for the starting of P.L.A.R. firm. As stated already, there was a very large sum of money due to the first defendant as stridhanam amount of his mother invested in the main family firm, which amount was available to him for starting and conducting P.L.A.R. firm. The credit entry, dated 30th November 1926 in Exhibit B-1 in favour of the first defendant as on 16th November 1926 through Kandanoor R.M.P.K.P.A.R.

accounts of 42,68173 dollars shows that the first defendant's moneys were in the Kandanoor family firm. Certain this amount was available to him even before the partition. We are, therefore, of the opinion that the plaintiff has not been able to show that from the inception P.L.A.R. firm was not the separate asset of the first defendant."

But the learned Judges still held that the Plaintiff was entitled in respect of the account of 21 enums. They observed that if the plaintiff's contention be accepted that the nucleus for the starting of the P.L.A.R. firm came from the joint famly, some difficulty would arise about the stridhanam amounts of the first defendant's mother and grandmother due to him. If on the other hand it was not a joint family business the price of 21 enums would be lost to the plaintiff and the plaintiff would be saddled with the second marriage expenses of the first defendant which were not binding upon him. They thought therefore that "a via media" must be found and they held that the P.L.A.R. firm must be deemed to be the first defendant's separate concern started with the sums borrowed as well as with the stridhanam amount of his mother but as the first defendant had invested the value of 21 enums which were joint family assets, the first defendant was bound to account for the value thereof and to give to the plaintiff his third share therein. If the P.L.A.R. firm was started with the independent borrowings of the first defendant and if in carrying on that business he brought into that business the properties of substantial value belonging to the joint family, an inference that there was a mixing up of the separate property with the joint family property so as to impress the entire property with the character of the joint family property would arise. The learned Judges also lost sight of the fact that immoveable property of the value of 96,000 Malayan dollars was also brought into this business and it was with the aid of that property and the income therefrom the business was conducted. The result was that in a business which was started with funds withdrawn from the K.M.P.L. firm which was originally

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

a joint family business property obtained on partition of the K.M.P.L. were brought in also the funds which belonged partially if not wholly to the first defendant under the partition and without maintaining any distinction between the separate sources from which the funds were obtained the business was carried on. In these circumstances an inference that the business was intended to be started for and on behalf of the joint family and not on behalf of the first defendant can readily be made. In any event, it would yield an inference that with the joint family property has mixed up the separate property of the first defendant and the entire property acquired the character of a joint family property.

Having carefully considered the contents of the letters and the contents of the first defendant in allowing himself to be assessed to tax qua the income of P.L.A.R. firm as a Hindu undivided family and the evidence about the commencement and consolidation of that business with the aid of funds which originally belonged to the larger joint family business, and viewed in the light of the character of the business which was of the same nature as the original joint family business, we have no doubt that the P.L.A.R. Port Dickson business was started and conducted by the first defendant for and on behalf of himself and his sons and was not his exclusive business.

Two more questions remain to be determined. The first is about the correctness of the direction to the first defendant to account for the marriage expenses. It appears that the first defendant's Brothers were not will to bear the burden of the expenses of the second marriage of the first defendant. The first defendant, however, contracted the second marriage in 1926 with the third defendant Meenakshi. The expenses incurred for this marriage are debited in the account Ext. B-91 which is headed "Debit and Credit transactions of marriage account of Arunasalam (first defendant) dated 15th November 1923 to 12th February 1927". After debiting the entries amounting to Rs.34,832.1.3 and taking into account

the interest thereon the balance is Rs. 36,686-2-9. The first defendant had incurred the expenses out of withdrawal made from the headquarters firm and the amount debited to him personally. In making a partition of the Kandanoor properties, the first defendant was found indebted in a sum of Rs.68,789-6-0 in the aggregate as on February 12, 1927, which included the marriage expenses of the first defendant and interest thereon. In the partition of the joint family property at Kandanoor to the credit of the headquarters account after division of the immoveables and moveables was found an amount of 1,42,865.70 Malayan dollars, and each branch was held on division entitled to receive 28,573.14 Malayan dollars subject of course to adjustment of the liability to satisfy the dues on the personal accounts of the members. The debt due by the first defendant considerably exceeded the amount which fell to his share and therefore the amounts due to the first defendant for the stridhanam of his mother and grandmother were taken into account and ultimately the account was adjusted by the first defendant paying 353.52 Malayan dollars. The High Court held that second marriage by a Hindu is not a sacrament and expenses incurred by the first defendant for such a marriage may not be brought into the account of the joint family at the time of the partition, and on that view has declared that the first defendant was liable to account to the plaintiff in respect of Rs. 36,686-2-9 debited in respect of the second marriage expenses and interest thereon. But Mr. Kesava Ayyangar for first defendant has submitted that even though the debt was incurred by the first defendant as his individual debt not being an avyavaharika debt, it was binding upon the Plaintiff under the doctrine of pious obligation of a Hindu son to pay the debts of his father which are not illegal or immoral, and the plaintiff was bound by any alienation made by the first defendant to satisfy that debt. Therefore counsel submits that when the partition was effected in the year 1927 between the first defendant and his brothers it was open to the first defendant in discharging his

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

liability for payment of the debts due by him to dispose of the joint family assets in which the plaintiff was interested.

There is apparently force in this contention. The debt incurred by the first defendant for his second marriage was not an avyavaharika debt and to satisfy that debt it was open to the first defendant to dispose of the joint family assets and the plaintiff who under the Hindu Law is bound to discharge the separate debts of his father because of his pious obligation in that behalf could not challenge the alienation, But it is unnecessary to dilate further upon this part of the case. The division of the Kandanoor headquarters assets and of the K.M.P.L. firm at Port Dickson assets have been separately made. The branch of the first defendant was awarded under the partition of the Kandanoor headquarters account certain immovable and movable properties. The branch was also awarded 28,573.14 Malayan dollars and the first defendant was found liable in 28,926.66 Malayan dollars in respect of his withdrawals. By virtue of the set off made against the liability of the first defendant's branch no amount was in fact paid to the first defendant, but he had to pay 353.52 Malayan dollars to square up the account. It is not the plaintiff's case that any oart of 28,573.14 Malayan dollars which was the share out of the Kandanoor joint family headquarters account was taken into the Port Dickson account. It is then difficult to appreciate on what ground the plaintiff was entitled to call upon the first defendant in this suit for partition of the joint family funds to account for the expenses which the first defendant incurred for this marriage. No such ground is suggested before us at the Bar. The claim made by the plaintiff and allowed by the High Court for an account of the expenses incurred by the first defendant for his second marriage expenses cannot be decree in this suit against the first defendant.

The last question which remains to be determined is abut the "Asthi fund" of the plaintiff's mother. The plaintiff by his plaint claimed in

paragraph 7 of tne plaint that at the time of the marriage of his mother, it was "negotiated and settled in accordance with the custom of the Nattukottai Chettiar's that a sum of Rs. 3,800/- should be set apart as the "Welfare fund" or the 'Assets Fund' for the benefit of the plaintiff's mother and that the male heirs who may be born of her" and accordingly on January 22, 1906 the Asthi Fund of Rs. 3,800/- was set apart and the marriage was celebrated. The plaintiff avverred that this and certain other amounts which belonged to the plaintiff's mother were invested in the name of the first defendant in a Rangoon firm and thereafter they were withdrawn and credited in the K.M.P.L. firm at Kuala Lumpur and ultimately at the time of effecting a partition in the year 1927, the first defendant received the amounts together with the interest accumulated thereon and included the same in the assets of the P.L.A.R. firm started by him. The plaintiff submitted that the Asthi Fund belonged to him exclusively and that the defendants did not possess any right therein and being according to the custom of the community a trust fund, that first defendant was bound to account for that amount from the inception and to pay the same with interest thereon. The plaintiff claimed that at the time of the marriage, beside the Asthi Fund two other funds stridhanam and the seermurai were also given during the marriage and the subsequent functions in accordance with the custom of the Nattukottai Chettiar community to the plaintiff's mother and they were entrusted to the first defendant and the same were invested at interest. The plaintiff claimed that in 1938 an account was made with the intervention of certain panchayatdars of the stridhanam and the seermurai funds and of certain jewellery belonging to his mother which the first defendant had appropriated and the first defendant agreed to pay Rs. 20,000/- in respect thereof and out of which on October 9, 1942 the first defendant paid Rs.11,000/- and the balance of Rs.9,000/- remained due to him with interest. The defendant by his written statement denied that any Asthi Fund amounting to Rs. 3,800 was set apart for the benefit of the plaintiff's mother or the male

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

children born of her on January 22, 1905 or at any time thereafter and he denied liability for payment of any such amount. With regard to the stridhanam and seermurai funds the first defendant also denied that there were any such amounts deposited. He admitted that he had given in 1938 a writing Ext. A-29 admitting liability to pay to the plaintiff Rs.20,000/- but Ext. A-29 was a nominal document which was not intended to create any obligation for it was given with a view to facilitate the marriage of the plaintiff by creating an appearance that he was possessed of substantial assets in his own right. According to the first defendant, it was agreed between him and the plaintiff that if the latter got married in accordance with the directions of the first defendant he would give to the plaintiff an amount of Rs.11,672/- but the plaintiff did not act according to his directions and did not get married as suggested by him, and therefore he was not liable to pay even Rs.11,672-10-0 as agreed. The first defendant also denied that he had paid Rs.11,000/- on October 9, 1942 as alleged by the plaintiff. It is clear from the pleadings that whereas the plaintiff alleged that certain amounts were deposited with the first defendant for the benefit of the plaintiff's mother and the male children born of her and also certain amounts such as stridhanam and seermurai for the benefit of the plaintiff's mother to which the plaintiff became entitled on his mother's death, the first defendant denied the deposits.

An Asthi according to the custom of Nattukottai Chettiar's community is a fund deposited by the bridegroom or his relations before or after marriage for the benefit of the bride and male issues born of the marriage. That is clear from the evidence on the record which is substantially accepted by the first defendant. Ramanathan Chettiar P.W.2, a relation of the first defendant deposed:-

> "Middle class families will set apart an asthi fund for the bride and the children to be born of the marriage. The asthi fund and the stridhanam amount will be this asthi fund. Asthi fund is different from stridhanam fund.

Stridhanam fund belongs to the bride absolutely and in the asthi fund both the bride andher children have rights."

In cross-examination the witness stated that:

"In poor and rich families asthi fund is not set apart, only in middle class families it is done. 'Asthi' means 'Fund'. Asthi Fund is set apart by the father-in-law to the son-in-law. If the father-in-law has no funds some one else will provide for this fund and this fund belongs to the bride and her children. For setting apart asthi fund generally no agreement is written. During the marriage negotiations this fund is set apart. This amount is placed in the bridegroom's name and a letter will be written to this effect before the marriage. Asthi Fund will be given either before or after the marriage when the bride is taken to the bridegroom's house on the fifth day after the marriage x x x x x x x x x x x x The asthi fund is not entered in the name of the bride."

Kasi Chettiar P.W. 4, who is another relation of the first defendant has deposed:-

"In Chetty community, Asthi fund is set apart at the time of the marriage. This amount is intended for the benefit of the bride and the children to be born to her. The amount is set apart either in the name of the bridegroom, or the bride or in the joint names of the bridegroom and the bride. The bridegroom has no right to the Asthi Fund even if it is set apart in his name."

In cross-examination he stated that:-

"Asthi means 'Fund'. Asthi is set apart from the bridegroom's family. This Asthi fund is set apart before the marriage. x x x x x x x x x x x x x It is not true

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

that the fund is set apart after marriage and then credited. Stridhanam Fund is never called Asthi Fund or Asthi panam. The Asthi fund belongs to the bride and the male offsprings to be born to her; if there are no male issues then female children get the benefit. x x x x x x x x x The Asthi fund is set apart according to the capacity of the family concerned."

The first defendant in his evidence admitted that an amount of Rs.3,800/- was set apart by his maternal grandmother Shivgami but he claimed that the amount of Rs.3,800/- was a gift personal to him and was not the Asthi fund of the plaintiff's mother. He denied that at the time of the marriage with the plaintiff's mother any Asthi fund for the benefit of the bride or her male children was set apart, and asserted that an Asthi fund is always credited in the name of the bride. That an amount of Rs. 3,800/- was also provided by Shivgami - first defendant's grandmother - shortly before his marriage with the plaintiff's mother and was credited in the accounts as Asthi is not in dispute. The first defendant merely contended that the amount of Rs.3,800/- which originally belonged to his maternal grandmother Shivgami was a gift made personally to him. But the accounts maintained at Kandanoor destroy this case of the first defendant. There is an entry Ext.A-23 under the heading "Account showing RM.K.P.K.Arunasalam's tanadu (personal money)" in which an amount of Rs.3,800/- is credited under the heading 'Amount set apart for asthi through the maral of T.AR.CT in respect of 1 AL.M.KR.S's Rangoon hundi'. There is another entry in respect of Rs.554/10/0 about 'one Colombo hundi obtained for stridhanam money inclusive of Edu pon - through the maral of the aforesaid persons'. There is still another entry for Rs.161/- in respect of 'one Colombo hundi obtained for vevu (presents of foodstuffs) from PR.PL.RM. for the year when there was separate mess and residence - amount invested through the maral of T.AR.CT'. The total amount of Rs.4,515.10.0 is accordingly credited to the first defendant. There is also an account relating to T.AR.CT. firm at Rangoon and in that account there is a debit entrydated May 19, 1906

in respect of "a hundi for Rs. 3,800/- drawn in favour of AL.M.K.R.S. payable from January 24, 1906, amount obtained from R. (Rangoon) S.RM.N.V.N. with interest - as for subsequent to May 21, 1906. The amount debited is Rs.3,951-9-6. This amount together with stridhanam amount to Rs. 554-10-0 and the vevu amount of Rs.161/- and interest has remained with the T.AR.CT. Rangoon firm till September 23, 1910. On that date the amount was withdrawn and credited into the head-quarters firm in the account of KP.AR. (first defendant) in respect of two hundis for Rs. 4,175-0-6 and Rs. 2,064/- received. These amounts are then taken into the K.M.P.L. firm accounts at Kuala Lumpur.

The K.M.P.L. firm Port Dickson account shows that on December 19, 1924 an amount of 12,868.87½ Malayan dollars was brought from the Kuala Lumpur firm into the K.M.P.L. firm at Port Dickson and ultimately in making up the accounts credit is given to the first defendant for this amount in Ext. B-1, 'Account of Kandanoor RM.P.KP.AR's (first defendant) nadappu dealings'. The first defendant has admitted in his evidence that the amount of 12,868.87½ Malayan dollars represents the anount of Rs.3,800/- and Rs. 725-10-0 which were the stridhanam and the vevu amounts of his wife. There is also a letter Ext. A-27 dated November 21, 1923 which was written by the first defendant at or about the time of his marriage with the third defendant in which, among others, there is directions for crediting in the name of RM.P.KP.AR. Palaniappa (the plaintiff) as on September 21, 1923 a sum of Rs.10,500/- "set apart for his mother". The first defendant has sought to explain in his evidence that the amount of Rs.10,500/- directed to be credited to the plaintiff did not mean the "Asthi Fund set apart for the plaintiff's mother.

It appears from the evidence that the time of Chockalingam's marriage which took place shortly after the first defendant's marriage with the plaintiff's mother, "Ashti Fund" which was approximately equal to the amount

In the Supreme Court of India

No.16
Judgment
25th
October
1963

(Continued)

was deposited in the name of Chockalingam. The first defendant had also at the time of his second marriage deposited an "Asthi Fund" in the year 1923. The account Ext. A-23 clearly shows that Ashti amounting to Rs. 3,800/- was deposited and that was regarded as of the same character as the stridhanam and vevu amount. That Rs.3,800/- was deposited in the name of the first defendant is not disputed by him but his claim merely is that even though it is called "Asthi" it was intended for his own benefit and not for the benefit of the plaintiff's mother. But the evidence of witness P.W.2 and P.W.4 which has substantially not been challenged establishes that "Asthi Fund" is depoited at or about the time of marriage for the benefit of the bride and the male children born of her, and it is deposited in the name of the bridegroom or the bride, and the circumstances that all the three items which are found credited to the first defendant in Ext. A.23 two of which admittedly belonged to the plaintiff's mother, were subsequently carried from the T.AR.CT. Rangoon firm in a consolidated account to the K.M.P.L. firm at Kuala Lumpur and then into the K.M.P.L. firm at Port Dickson strongly supports the plaintiff's case that the "Asthi amount of Rs.3,800/- deposited on January 23, 1906 in the first defendant's name in the Handanoor account belonged to the plaintiff's mother.

The High Court was of the view that prima facie the documents Exts A-23 and A-27, the entries posted in Ext.B-1 and the subsequent disposition of the amount of stridhanam and vevu supported by the testimony of P.W.2 and P.W.4 and the admissions made by the first defendant in his evidence made out a strong case in favour of the plaintiff that an Asthi amount of Rs.3,800/- was set apart for the benefit of the plaintiff's mother and her male children. But the learned Judge thought that because in the subsequent settlement recorded in Ext. A-29 made in the year 1938 with regard to the stridhanam and the vevu amounts (but not in respect of the Asthi Fund) there was no reference to the Asthi fund, the plaintiff's claim for the Asthi fund must fall. The evidence in that behalf is this: In 1938 the plaintiff approached certain friends of the family

and asked for a settlement of his claims about his mother's Asthi fund, and the stridhanam and the vevu amounts. This is deposed to by Ramanathan Chettiar, P.W.2 and nothing has been suggested as to why the testimony of that witness who is apparently a respectable person should be disbelieved. That in fact a claim was raised by the plaintiff in respect of certain amounts belonging to his mother in 1938 and there was a settlement about his claims to the stridhanam and the vevu amounts and the ornaments of his mother is not now in dispute, though it was disputed in the Trial Court. The dispute is about the Asthi. The plaintiff says that he claimed Asthi of his mother as well, but the first defendant declined to settle the claim on the plea that the books of account relating to the amount were at different places and he was not in a position to ascertain the dues. In this he is supported by Ramanathan P.W.2. The writing dated October 25, 1938 Ext. A-29 which has been signed by the first defendant, in so far as it is material, recites:-

> "In respect of Rs. 715-8-0 (rupees seven hundred and fifteen and annas eight), being your mother's stridhanam money given by Kottaiyou PR.PL.RM. made up of the following two items, viz. a sum of Rs.554-8-0 x x x and a sum of Rs. 161/- x x x the amount inclusive of interest accrued up to the 28th September 1938 at Rangoon nadappu rate of interest is Rs. 6,827-6-0."

It further recites that the first defendant agreed to pay for the jewels of the plaintiff's mother which he had appropriated to himself, and the plaintiff's claim in that behalf was settled at Rs.13,172-10-0. Thus a sum of Rs.20,000/- for the two items was admitted by the first defendant to be due to the plaintiff. On the reverse of the agreement there is an endorsement reciting that on October 9, 1942 the first defendant had paid in all a sum of Rs.11,000/- towards his liability for Rs.20,000/-. Ramanathan Chettiar

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

P.W.2 has deposed that the Panchas had fixed the value of jewels at Rs. 13,000/- odd and the stridhanam amounts as per the vaddi chittai at Rs. 6,000/- and odd and these came to about Rs. 20,000/- and then the first defendant gave Ext. A-29, It is true that this document makes no reference to the claim of the plaintiff for the Asthi fund, eventhough such a claim was made by him. The The learned counsel for the first defendant argued that if there had been a dispute about the Asthi fund to which the plaintiff was entitled, his mother having died in the year 1922, that dispute also would have been settled especially when according to the plaintiff it was raised before the Panchayatdars and the fact that such a dispute was not referred to in Ext. A-29, and not settled raises a strong inference in favour of the case of the first defendant, that the plaintiff was not entitled to Rs. 3,800/- with interest thereon as the Asthi Fund of his mother. Some support is sought to be derived from the fact that Ext. A-23 is a single document which contains all the three entries relating to the Asthi Fund, stridhanam and vevu amounts and the statements of the plaintiff and P.W.2 that the first defendant showed his inability to settle the claim on the plea that the books of account were not with him could not be accepted, for, it was submitted that in working out the interest on the amount due as stridhanam and vevu, Ext. A-23 must have been produced before the Panchayatdars. But Ramanathan Chettiar P.W.2 has not stated that accounts were produced before the Panchayatdars and there is inherent evidence in Ext. A-29 that Ext. A-23 which recorded the three items of Asthi fund, stridhanam and vevu was not before the Panchayatdars. There is a discrepancy, though a small one, about the amount due as stridhanam: whereas in Ext. A-23 the amount credited is Rs.554-10-0, in Ext. A-29 it is stated to be Rs. 554-8-0. Again there is discrepancy of one whole year in respect of the date of deposit of the amount of stridhanam. According to Ext.A-23 the amount is deposited on March 26, 1906, in Ext. A-29 it is recited that it was deposited on March 26, 1907. The Tamil year referred to in

Ext. A-23 is Viswavasu (corresponding to 1906) where in Ext. A-29 it is Prabhava (corresponding to 1907) Ext.A-30 which is the chithi in which interest is calculated on the amount of Rs.554-8-0 also commence from 13th Panguni of the year Prabhava i.e. March 26, 1907 and not from the 13th Panguni of the year Viswavasu (1906). Those discrepancies about the year of the deposit and the quantum of the stridhanam amount clearly show that Ext. A.23 was not before the Panchayatdars and the first defendant at the time when Ext. A-29 was signed.

The evidence in favour of the plaintiff's claim that the amount of Rs.3,800/- was deposited as Asthi fund at the time of the plaintiff's mother's marriage is so overwhelming that it is impossible to discard that evidence relying upon the single circumstance that Ext. A-29 which is ex facie a settlement only with regard to the claims of stridhanam, vevu and the jewellery of the plaintiff's mother does not refer to and decide the dispute about the "Asthi" which the plaintiff and Ramanathan P.W.2 say was raised before the Panchayatdars. Ramanathan P.W.2 has deposed that the settlement made by the Panchayatdars was only in respect of the stridhanam and the vevu and not in respect of "Asthi Fund". We are therefore unable to accept the view of the High Court in this behalf.

The learned counsel for the first defendant has not challenged the decree of the High Court directing partition of the immovable properties items, 3, 5 and 6 in Sch. 'A', and the award of a larger share in item 2.

He has also not challenged the decree directing the payment of Rs.11,000/- due under Ext. A-29, nor has he challenged the decree directing payment by the first defendant Rs.1,867.8.0 being the amounts advanced by the plaintiff to the first defendant.

In the Supreme Court of India

No.16

Judgment 25th October 1963

(Continued)

In that view the decree passed by the High Court will be modified:

(i) There will be a declaration that the P.L.A.R. 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 Decenber 3, 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.

(ii) The decree directing an account of the 21 enums will be deleted because it does not survive in view of the decree given to the plaintiff for partition of all the assets of the P.L.A.R. firm.

(iii) The decree of the High Court declaring that the first defendant is liable to account to the plaintiff for the sum of Rs. 36,686-2-9 debited in respect of his second marriage expenses will be set aside.

(iv) It is directed that the first defendant do pay to the plaintiff the "Asthi" amount of Rs.3,800/- deposited with the first defendant on March 23, 1906, together with interest at the appropriate rate applicable to the claim.

In view of the divided success there will be no order as to costs of these appeals. Order as to costs of the High Court is maintained.

(Signed) A. K. SARKAR, J.
(Signed) J. C. SHAH, J.
(Signed) RAGHUBAR DAYAL, J.

New Delhi
25th October 1963

No.17

ORDER

In the Supreme Court of India

No.17

Order 25th October 1963

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEALS Nos. 441-442 of 1962

Appeals by certificate from the Judgment and Decree dated the 10th day of August 1956 of the High Court of Judicature, Madras in A.S. No.323 of 1952, arising out of the Judgment and Decree dated the 1st day of April 1952 of the Court of the Subordinate Judge, Devakottai in O.S. No. 70 of 1950.

RM.P.KP.AR.PL.Palaniappa Chettiar — Appellant in C.A.No.441/62 and Respondent in C.A. No.442/62

- versus -

1. RM.P.KP.AR.Arunachalam Chettiar
2. Lakshmanan Chettiar
3. Meenakshi Achi

Respondents in C.A.No.441/62 and Appellants in C.A.No.442/62

25th October 1963

C O R A M:

THE HONOURABLE MR. JUSTICE A. K. SARKAR
THE HONOURABLE MR. JUSTICE J. C. SHAH
THE HONOURABLE MR. JUSTICE RAGHBAR BAYAL

for the Appellant in C.A.441/62 and Respondents in C.A. 442/62 — Mr. A.V.Viswanatha Sastri, Senior Advocate (Mr. B. Parthasarathy, Advocate and M/s J.B. Dadachanji, O.C.Mathur and Ravinder Narain, Advocates of M/S J.B. Dadachanji & Co. Advocates with him)

In the Supreme Court of India

No.16

Order 25th October 1963

(Continued)

For the Respondents in C.A. No.441/62 and Appellants in C.A. No. 442/62

Mr. R. Kesava Iyengar, Senior Advocates. (M/s K. Parasaran, K. Jayaram and R. Ganapathy Iyer, Advocates with him)

The appeals above-mentioned being called on for hearing before this court on 13th, 14th, 16th, 19th, 20th and 21st days of August 1963, UPON hearijg Counsel for the parties the Court took time to consider its Judgment and the appeals being called on for Judgment on the 25th day of October 1963 THIS COURT in modification of the Decree dated the 10th day of August 1956, passed by the High Court, Madras, in A.S. No. 323 of 1952 DOTH DECLARE:-

I. (a) that the P.L.A.R. firm at Port Dickson and the assets thereof are the estate of the Joint Hindu Family consisting of the Plaintiff and Defendants and the Plaintiff RM.P.KP.AR.PL. Palaniappa Chettiar is entitled to a third share therein;

(b) that the division of the assets of the business will be made as agreed by the parties before the High Court, Seremban, in Civil Suit No. 34 of 1951, as recorded in the Decree in the Order of that Court on December 3, 1954 AND further before the High Court, 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

II.(a) AND THIS COURT DOTH ORDER that the decree of the High Court, Madras directing an account of the 21 enums be and is hereby set aside;

(b) that the Decree of the High Court declaring that defendant No.1 - RM.P.KP.AR. Arunachalam Chettiar is liable to account to Plaintiff RM.P.KP.AR.Palaniappa Chettiar

In the Supreme Court of India

No.17

Order 25th October 1963

(Continued)

for the sum of Rs.36,686-10-9 (Rupees Thirty six rhousand, six hundred and eighty six, ten annas and Nine Pies) debited in respect of his second marriage expenses be and is hereby set aside;

III. AND THIS COURT DOTH DIRECT that Defendant No.1 - RM.P.KP.AR.Arunachalam Chettiar DO PAY TO Plaintiff RM.P.KP.AR. PL.Palaniappa Chettiar the "Asthi" amount of Rs.3,800/- (Rupees Three thousand and eight hundred) deposited with him on the 23rd March 1906, along with the interest at the appropriate rate applicable to the claim;

IV. AND save and except as aforesaid the Decree dated the 10th day of August 1956, passed by the Madras High Court in A.S. No.323 of 1952 be and is hereby affirmed

V. THAT there shall be no Order as to costs of these appeals in this Court; and the Order as to costs of the High Court be and is hereby maintained;

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned.

WITNESS the Honourable Mr. Bhuvaneshwar Prasad Sinha, Chief Justice of India, at the Supreme Court New Delhi this the 25th day of October 1963

(Signed) GURU DATTA
Deputy Registrar

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.17 of 1969

IN THE FEDERAL COURT OF MALAYSIA AT KUALA LUMPUR
(APPELLATE JURISDICTION)

B E T W E E N:

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

- and -

ANA RUNA LANA PALANIAPPA CHETTIAR (Plaintiff) Respondent

RECORD OF PROCEEDINGS

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Solicitors for the Appellants