PRIVY COUNCIL

Ramalinga Annavi

Vs.

Narayana, Annavi

P.C.A. Nos. 150 and 151 of 1919
(Lords Atkinson CJ and Carson, Sir John Edge and Mr. Ameer Ali.JJ)

7.3.1922

JUDGMENT

Lords Atkinson CJ.

1.These two consolidated appeals from a decree of the High Court of Madras arise out of a suit which was brought by the plaintiffs in the Court of the Subordinate Judge of Tinnevelly on the 31st January, 1910, for a decree for partition in respect of certain moveable and immoveable properties together with out standings of a money-lending business on the allegation that they and the defendants 1, 2 and 3 formed members of a joint undivided Mitakshara family. The above pedigree will explain the relative positions of the parties and their respective contentions.

2. For the convenience of reference Krishna Annavi at the head of the table may be called Krishna 1 No. 1 and his grandson, the son of Ramalinga, as Krishna No. 2. Krishna Annavi No. 1 had two brothers, Ram and Subramania, who had separated from him in his life-time; and on his death his three sons, Muthuswami, Ramalinga and Lakshmivaraha, with their sons, continued to hold and deal with their properties as members of a joint family. Ramalinga had five sons, whose names are given in the pedigree. One of them Anantha was adopted by Raman Annavi. On his death, somewhere in the sixties, his widow Ramal Ammal purported to adopt Ram Krishna, her deceased husband's brother, as a son to him. This adoption was held by the Courts to be invalid under the Hindu Law as one brother cannot adopt another as his son. Ramal, however, remained, in possession of Anantha's property until her death in 1891, when it was divided among his reversionary heirs of whom the three sons of Krishna Annavi No. 1 were the principal sharers. Subramania, the fourth son of Ramalinga appears to have died without issue, leaving Lakshmi Ammal, his widow,

who is defendant No. 5. Ram Krishna's adoption having been set aside he remained a member of his branch of the family and is now constituted as defendant 2 in the present act for partition. His son Ramalinga No. 2 is joined with him as defendant No. 3. Defendant No. 1 is the son of Krishna No. 2, the second son of the first Ramalinga who died in 1909. The defendant No. 1 was an infant at the time of suit and appears by his mother, defendant No. 6. Muthuswami died in 1898, and Lakshmivaraha and the other two plaintiffs are Lakshmivaraha's grandsons. Besides the immoveable property the family held from the time of Krishna No. 1 and what they acquired after Ramal Ammal's death, they appear to have carried on a profitable money-lending business. Ramalinga had assigned to Rama Krishna (defendant No. 2) certain properties, apparently owing to the failure of his adoption. Lakshmivaraha had also in his life-time made certain gifts to his daughter, Ponnu Ammal, defendant No. 4 the first plaintiff's sister. The plaintiff's case is that these assignments and gifts are ineffective and inoperative, and they seek to have the properties assigned to defendant No. 2 as above and the monies given to defendant No. 4 by Lakshmivaraha, included in the partition. and they alleged that they are entitled to a half share ; and the defendant 1 and the defendant 2 (with his son) to the other half. The plaintiffs also claim that in the partition a sum of Rs. 2,000 should be allotted to them out of the joint assets for the marriages of the second and third plaintiffs. The defendant No. 6 is the mother of the minor defendant No. 1 and the widow of Krishna No. 2. She is made a party to the action, on the allegation that she has appropriated to her own use a large amount of joint family funds.

3. In 1895, which was the crucial period in the case ; there were large outstanding due to the family in respect of the money-lending business which appears to have been mainly in the hands of Krishna, the father of defendant No. 1 as he was a man of intelligence and knew something of law. The first defendant alleges in his written statement that in that year there was a complete division among the three brothers, the sons of Krishna No. 1 of the family properties both moveable and immoveable, including the outstanding. He accordingly maintained that the present suit for partition is unfounded. He also denied the right of the defendant No. 2 to any share in the family properties. His case is set forth clearly in the paragraph 14 of his written statement as follows:-

> "About 16 or 17 years ago, during the life-time of Muthuswami Annavi, Lakshmivaraha Annavi, and Ramalinga Annavi mentioned in para. 4 of the plaint, they became divided. At that time, considering the facts that since the

2nd defendant's adoption had been adjudged to be invalid, some provisions should be made for him and that the said Muthuswamy Annavi was unmarried and childless, and considering the welfare of the family Rs. 5,000 was given to Muthuswami Annavi in lieu of his share and sum of Rs 20,000 was given to the second defendant out of the remaining outstanding only. and it was settled that the father of the first plaintiff and the grandfather of the 1st defendant should equally divide between themselves the rest of the outstanding as well as the immoveable properties and they gave effect to it even during their life-time."

4. Defendant No. 2, in his written statements alleges that in 1895 the money-lending business, carried on by the joint family was wound up so far as it was a, joint business, and the outstanding which belonged to the joint family were divided among the different members, but that the immoveable property was not divided, nor was there a disruption of the joint family. He claims that the properties which stood in his name prior to 1895 and what he himself has acquired since, belong to him exclusively. Defendant No. 4 asserted that the gifts to her were, valid and could not be questioned by the plaintiffs.

5. Defendant No. 5, widow of Subramania claimed that provision should be made for her maintenance in the partition proceedings.

6. Upon these contentions twenty-six issues were raised for trial in the first Court. For the purpose of the present judgment, however, they resolve themselves into four main questions : (1) whether, as the plaintiff alleges, the family continued joint until its severance on the institution of the suit, or as the High Court seem to hold on the decree of the Subordinate Judge directing partition, (2) whether, as the first defendant alleges there was a complete partition between all members of the joint family in 1895 ; (3) whether the second defendant was a member of the joint family and entitled to take a share on partition; and (4) whether the properties acquired after 1895 were held jointly, as the plaintiffs allege, or whether they were acquired and held by the members according to specific shares in proportion to the contributions made by each towards their acquisition. To these main questions should be added the following subsidiary points for determination viz., (1) whether the defendant No. 2 was entitled, as he alleges to the properties which were held in his name before 1895 and those he personally acquired after that date; (2) whether the gifts by Lakshmivaraha a to Ponnu Ammal are valid; and (3) whether the plaintiff Narayan was entitled to have certain sums allotted to him on partition for the marriage of his sons.

7. The Subordinate Judge, on the consideration of the oral and documentary evidence,

decided against the plaintiffs in respect that the family continued absolutely joint in all respects until the present claim. As regards the first defendant's contention, he held that there was no complete partition in 1895, and that the arrangement in that year related only to the winding-up of the family money-lending business and to the division of the out-standings. He held that there was no disruption of the joint status, and that they continued undivided in respect of all the immoveable property, though the houses which each of the members occupied were allotted to the parties occupying the same. He held further that the defendant No. 2 was entitled upon partition to his share in the joint property, and that the properties that had been held in his name prior to 1895, together with those he had acquired since belonged to him. He held also that the properties which had been acquired after 1895 in individual names belonged to the particular person in whose names it was purchased; but that the properties which were acquired by the parties jointly were divisible in three parts in proportion to the purchase money paid by each, or where that was not indicated in proportion to the shares in the rents and the issues enjoyed by each. With regard to the gifts to Ponnu Ammal by Lakshmivaraha he held them to be valid ; and in respect of the claim of the plaintiff No. 1 to have a sum of Rs. 1,000 set apart for each of his son's marriage he held it to be untenable.

8. Respecting the properties, in Schedules 11 and 13 attached to the plaint, which the plaintiffs had claimed as exclusively their own and in their possession, the trial Judge, towards the end of his judgment, said as follows :-

> " As to the properties in plaint Schedules XI and XIII, there is no evidence on plaintiff's side to show that they belong to the family. Defendants 1 and 2 do not claim any right in them. If the plaintiffs are in possession of these properties exclusively, they may enjoy them. They will be excluded from the decree."

9. These properties were, accordingly, not included in the decree for partition made in the first Court.

10. The plaintiffs appealed to the High Court from this decision and the defendant No. 1 preferred a cross appeal and one of the contentions he raised had reference to the properties in Schedules 11 and 13. It was alleged on his behalf that the Subordinate Judge was in error in holding that the first defendant did not claim any right to them ; and it was further urged that if, by any omission on the part of his guardian, no claim in fact had been preferred, he should not be prejudiced thereby, This contention was supported by an affidavit.

11. Their Lordships will deal with this point later, after they have considered the conclusions at which the learned Judges of the High Court arrived on the main facts of the case. They have held that the claim of the plaintiffs that the family remained joint in every respect after 1835 was well founded, and that in 1895 only three specific items of the out-standings were divided among the parties jointly entitled to the same. They held further, differing from the first Court, that although the properties acquired after 1895 in individual names belonged exclusively to the parson in whose name they stood, those that had been acquired in joint names were divisible in three shares as acquisitions by members of a joint family. In other words, the learned Judges held that in these after-acquired properties, as the ancestral immoveable properties left undivided in 1895, the plaintiffs were entitled to a half share, the first defendant to a one-fourth, and the second defendant, with his son (defendant No. 3) to the remaining one-fourth. They affirmed the decree of the Subordinate Judge, in respect of the claim of the defendant No. 2 and upheld the validity of the gifts to Ponnu Ammal. Regarding the claim of the plaintiffs to have separate provision made for the marriages of the second and third plaintiffs, they disallowed it in respect of the plaintiff No. 3, but allowed it in respect of plaintiff No. 2, as he was married after the institution of the suit but before the decree of the Subordinate Judge, they being of opinion that the severance of the joint status did not take place until the decree for partition by the first Court.

12. With regard to the properties in Schedules 11 and 13, they held, apparently on the affidavit filed by defendant No. 1, as follows :-

> "The plaintiffs claim a share of the properties in Schedules XI and XIII. The defendants did not claim in the Lower Court any interest in them. On the ground that the plaintiffs did not prove them to the properties belonging to the family, the suit was dismissed. We think the properties should be divided between the parties. The decree will be modified accordingly."

13. They accordingly modified the decree of the Subordinate Judge and further directed that:-

> "According to our findings, the houses and Manaikats, which belonged to the family in 1895-1896 will be divided as family properties. All parties bear their own costs."

14. The High Court made their decree on the 29th April, 1915. On the 28th March, 1917, there was an application on behalf of the plaintiffs for review of the judgment. and on the fresh arguments advanced on the review, the learned Judges amplified and

enlarged their findings in favor of the plaintiffs and made a decree in accordance with these findings. From this decree these two appeals have been preferred to His Majesty in Council, one on behalf of the first defendant, the other on behalf of the plaintiffs and both appeals as already stated have been consolidated.

15. The concurrent finding of the Courts in India that the family continued joint after the division of the outstanding in 1895 and remained in joint possession and enjoyment of the ancestral immoveable properties is not impugned now ; but the decision of the High Court in respect of the transaction of 1895 is strongly challenged on behalf of the first defendant, the son of Krishna No. 2. It is contended on his behalf that the conclusion of the High Court that, in 1895, only three specific items of the outstanding were divided as against the weight of evidence and inconsistent with the general scheme of the transaction. and it is urged that the reasoning in which the division is supported in respect of the three items, applies with equal force to all the other items. It is also urged that the view the Judges of the Court took in respect of the shares of the parties in the acquisitions made after 1895 is not in accordance with evidence and does not proceed on right inferences from the facts.

16. On the plaintiffs' side it has been contended that as it is found that the family continued to be joint, the division of the respective interest of the parties in certain outstanding in 1895 could not affect the business as a whole; or discharge the properties acquired with the monies so divided from the obligations that attached to them as acquisitions of the joint family. The plaintiffs have also re urged their objections to the gifts to Ponnu Ammal and pressed their claim to a provision for the marriages of the plaintiffs Nos. 2 and 3. It seems to their Lordships that in the debate before the Board the difference between a complete "partition" in a joint undivided Hindu family and a partial division of interest in respect of some specific property or part of the joint properties has been overlooked. This distinction has been clearly pointed out in the judgment of Lord Westbury in the well-known case of *Appovier v. Rama, Subba Iyer, Madras* [1] and although the passage has often been cited it is desirable to reproduce it here.

> " But when the members of an undivided family agree among themselves with regard to particular property, that it shall thenceforth be the subject of ownership, in certain defined shares, then the character of undivided properly and joint enjoyment is taken away from the subject-matter so agreed to be dealt with ; and in the estate each member has thenceforth a definite and certain share, which he may claim the right to receive and to enjoy in severalty,

although the property itself has not been actually severed and divided."

17. It will be thus seen that, under the Hindu Law, it is open to the members of a jointly family to make a division and a severance of interest in respect of a part of the joint estate whilst retaining their status as a joint family and holding the rest as the properties of a joint undivided family.

18. Both the Courts in India held as a question of fact that whatever took place in 1895, did not create a disruption of the family status. The Subordinate Judge found upon the evidence in the case that the worship had remained joint. The parties undoubtedly lived in separate dwellings, but that circumstance is explained by the fact that the family had increased in number and the original building could not accommodate all. The Subordinate Judge also points out that there was no cessor of commensality, inasmuch as all the members of the family drew their provisions from one store-room or granary as stated in the evidence.

19. The sole question for determination thus resolves itself into an enquiry as to the character of the division which took place in 1895-96. Was it a mere division of three items of outstanding, or did it relate to the whole money-lending business as a joint family business ? The defendant No. 1 in support of his allegation that there was a complete winding-up of the family money-lendng business and a complete division of the outstanding has rested in his case on Ex. IX on the record, which is a list of outstanding due to the family at that time. That list covers 27 items and consists of 4 parts ; part 1 deals with the actual outstanding, the other three deal with the allotment of the shares to the three persons who were entitled to the monies at the time and among whom, after allotment of a large sum to defendant No. 2, the outstanding were divided. It begins with the statement: " List of outstanding due to the sons of Krishna Annavi," and goes on to say, "particulars of the total amount belonging and due to Muthuswamy, Ramalinga and Lakshmivaraha, sons of Krishna Annavi; " List 2 shows the sums set apart for a certain worship ; List 3 gives the particulars of the monies allotted to Muthuswami, the eldest brother ; List 4 contains the particulars regarding the sum of Rs. 32,039 allotted to the share of Ramalinga, list 5 relates to the allotment of Rs. 32,038 to the share of Lakshmivaraha, and List 6 shows the particulars relating to Rs. 21,359 allotted to defendant No. 2. With regard to the method of division the Subordinate Judge states as follows:-

> " The first defendant's case is that, as Muthuswami Annavi was unmarried, he took Rs. 5,073 out of this amount and that in lieu of the 2nd defendant's share in the family immoveable properties, he was given Rs. 21,359-14-10. A sum of

Rs. 1,000 was reserved for payment as Shridhanam (to whom it is not stated) and a sum of Rs. 524 was set apart for charity. A sum of Rs. 500 was reserved for payment of family debts. The balance of Rs. 64,000 and odd was divided almost equally between Lakshmivaraha Annavi and Ramalinga Annavi. The total amount of outstanding set apart to Ramalinga Annavi consisting of 37 items as stated in sheet 6 of Ex. IX came to Rs. 32,039-5-9. The total of outstanding set apart to Lakshmivaraha Annavi consisting of 26 items as stated in the 7th sheet of Ex. IX came to Rs. 32,038-10-11. The particulars of the outstanding set apart to the 2nd defendant, Ramiliaga Annivi, are givan in sheet 8 of Ex. IX. The particulars of the three items, amounting to Rs. 5,073, set apart to Muthuswami Annivi are given in the 5th sheet of Ex. IX. Ex. IX-(A) purports to be a draft from which Ex. IX was copied."

20. Out of the amounts which were allotted to Ramalinga and Lakshmivaraha, the Subordinate Judge took six principal items in order to consider the nature of the division and the circumstances connected with the subsequent application of the monies received in the transaction of 1895 by the individual members. His examination of facts is so close and his method of treatment so clear and detailed that their Lordships feel themselves relieved of the necessity of discussing at length the mode in which the parties dealt with the different items; but a few remarks seem necessary to indicate the considerations which have weighed with their Lordships in the determination of these appeals.

21. The largest amount shown in the list is a sum of Rs. 22,150, which was owing from a Mutt in the Tanjore district. The division of this sum was made in the following way : Rs. 8,700 were allotted to Ramalinga, Rs. 8,300 to Lakshmivaraha and Rs. 5,150 to the second defendant. After stating these facts the Subordinate Judge proceeds to show how this money came into the hands of the parsons to whom the several sums were allotted and how these sums were applied. With regard to this amount of Rs. 22,000 the learned Judges of the High Court agree with the Subordinate Judge that the division was effective and the various sums allotted to the three parties were applied by them in the manner pointed out by him. The next item which the Subordinate Judge took up for examination was the sum of Rs. 19,725 with which he deals in the same exhaustive manner and shows how that sum was divided and how it was applied by the persons among whom the division was made. He shows that out of that sum Rs, 7,400 were set apart to Ramalinga, Rs, 7,400 to Lakshmivaraha and that Rs. 4,925 were given to defendant No. 2. After an examination of the documents connected with this division he came to the conclusion that Lakshmivaraha received

his share and applied the same to his uses, and that, therefore, he is not entitled to any share in the sums allotted to the defendants Nos. 1 and 2. With regard to this item, the High Court takes a different view. They hold, upon a letter which Krishna Annavi No. 2, the 1st defendant's father, wrote to the Manager of the mortgagor on the 25th March, 1909, saying that, " We consent to receive for the total debt due by the Zemindar a certain rate of interest," that there was no such division as the first Court had found. With regard to Exhibit C, on which practically the decision of the High Court in respect of this particular item rests, it seems sufficient to say, as the Subordinate Judge properly observes that a mere statement of Krishna Annavi No. 2 cannot outweigh the other facts.

22. With regard to the item of Rs. 6,550, the Subordinate Judge has applied the same method of examination and the High Court have affirmed his view. Regarding another item consisting of Rs. 1,795, due from a Mutt on a mortgage, the Subordinate Judge held that it had been divided among the parties in accordance with the allotments shown in the list. The learned Judges of the High Court have set aside the finding upon what appears to their Lordships a certain misapprehension of the facts. These facts are fully set out in the judgment of the first Court, and do not require repetition.

23. Regarding item No. 2 in the first list, which amounted to Rs. 7,594, due to the Annavi family from a Zemindar, it appears that Rs. 2,847 were set apart to Ramalinga and the same amount to Lakshmivaraha and the balance of Rs. 1,898 was given to the second defendant. Respecting this item the Subordinate Judge deals with it equally exhaustively and holds :-

> " In this item, Rs. 2,847-15-9 was set apart to Ramalinga Annavi and the same amount to Lakshmivaraha Annavi. The balance of Rs. 1,898-10-6 was set apart to the second defendant. Ex. XI is a pronote for Rs. 3,185 2-1 executed to 1st defendant's father, Krishna Annavi, by Sivan Sethuroyar on the 13th August, 1897. This amount is described as his father's share in the amount due under a pronote executed to Ramalinga Annavi on account of a Chit conducted by Sivan Sethuroyar. This pronote was attested by Lakshmivaraha Annavi and Ramakrishna Annavi. Ex. XI (A) is a pronote for Rs. 3,846-13-8 executed by Sivan Sothuroyar on 5th August, 1900, for the amount due under Ex. XI. Sivan Sethuroyar's son Sundara Subramania Sethuroyar executed to Krishna Annavi, the 1st defendant's father, the pronote, Ex. XI (B) on 28th July, 1903, for Rs. 4,671-7-0 being the principal and interest due under Ex. XI (A). Defendants' 7th witness, Mana Rama Aiyar, has attested Exs. XI and XI (B); defendant's 5th

witness, Jagannadha Iyer, who was Kariyasthan under Sivan Sethuroyar, swears that he wrote Ex. XI and that first plaintiff's father and 2nd defendant attested it. This witness also wrote the pronote, Ex. XII, which was executed to 2nd defendant by Sivan Sethuroyar on the same date as Ex. XI, namely 13th August, 1897, for Rs. 2,123-6-8. The amount is described in that document as his share. This pronote was renewed in 2nd defendant's name on 5th August, 1900, by Ex. XII (A) for Rs. 2,564-8- 11 and a pronote similar to Ex. XI (B) was executed to 2nd defendant for Rs. 3,114-4- 0 on 28th July, 1903. The pronote executed to 1st plaintiff's father on the dates of Exs. XI and XII has not been produced. But it is mentioned in the pronote, Ex. XIII for Rs. 3,844-13-8, which was executed to 1st plaintiff's father on the 5th August, 1900, at the same time as Exs. XI (A) and XII (A). Ex. XIII (A) was executed to 1st plaintiff's father in renewal of Ex. XIII by Sivan Setburoyar's son for Rs. 4,671-7-0 on the same date as Exs. XI (B) and XII (B). These documents are proved by defendant's 5th witness, Jagannadha Iyer. Defendant's 6th witness, Ganapathi Aiyar, wrote Exs. XI (A), XII (A) and XIII.

"On the 1st of December, 1903, Sivan Sethuroyar's son Sundara Subramania Sethuroyar executed the sale-deed, Ex. XIV. for Rs. 15,350 in respect of certain lands in the village of Vellangali, that is, the properties described in Schedule VI11 and a land in Uppuvujanputhur in the Oorkadu Zamin, that is item No. 1 in Schedule XII (B). The sale-deed was executed jointly to 1st plaintiff's father, 1st defendant's father and 2nd defendant. The recital in the sale-deed is that out of the sale price, Rs. 7,000 was paid in cash that the balance Rs. 8,350 was credited towards a portion of the amount due to the vendees."

24. In respect of this item the High Court took a different view. They state their reasons thus:-

"There is nothing in the document to show that this amount was not the common joint property of all the three persons.

The balance of Rs. 8,350-0-0 was credited towards a portion of the amount due to the vendees under various promissory notes and a razinamah decree. There is nothing in the document to show the debts that were due to each individual coparcener. There is no doubt, therefore, that the property purchased under Ex. XIV was treated as common property. The purchase in the names of all the co-parceners jointly is inconsistent with the case set up by the defendants so far as this property is concerned. The Subordinate Judge says that the three persons purchased the property with the intention of dividing it along with the other

lands of the family which were left undivided. If this is so, there is nothing to suggest that this property was not intended to be treated as the other immoveable properties in which they were equally interested. There is nothing to support the inference of the Subordinate Judge that this property should be divided in the proportion in which the debts were divided. We therefore hold that the plaintiffs are entitled to a half share in the property purchased under Ex. XIV."

25. In their Lordships' opinion the view expressed by the Subordinate Judge appears to be fully warranted by the evidence.

26. The theory that in 1895 there was only a partial division of the outstanding which only related to three items, whilst the rest were left joint, is not consistent with the evidence, nor indeed logical. The defendant No. 2, in his written statement, gives the reason why the joint money-lending business was wound up. He says that in that year or about that time Lakshmivaraha desired to make some gifts of money to his daughter; the other members objected to these monies being paid out of the joint funds, it was then decided that the business should be wound up, and the shares ascertained and divided ; that Lakshmivaraha thus obtained his share, and out of that share made the gifts which are now impugned by the plaintiffs. This statement is supported by defendant No. 2 in his evidence. The reason for the division is clear and straightforward, and explains the subsequent conduct of the parties in the transaction. The deliberate preparation of the lists with their precise details and systematic apportionment of shares, the setting apart of a sum for worship, and the allotment of a sum to Muthaswani proportionate to the share to which he was legally entitled, for reasons which do not seem at all illegitimate, between a design to wind up altogether the family moneylending business and divide the outstanding. That these outstanding were in fact, divided and were taken by Ramaliaga Lakshmivaraha, and the second defendant in certain specific shares which roughly cams to three eighths to the first two and two eighths to Ramakrishna is proved beyond doubt. When subsequently the three combined in fresh purchases or mortgages they contributed towards such acquisitions in proportion to the shares they acquired on the division of the outstanding.

27. In connection with these purchases, the Subordinate Judge pertinently observes: -

" In all these documents there is a reference to Thangal Bhagam (your share). If there was no division, this recital would not have been made. The object of taking the signatures of the other two co-parceners in the documents executed

to. each of them was to prevent them from after wards contending that the documents were taken without their knowledge. "And the oral evidence shows that the rents and issues of the properties so acquired were taken by the parties in those shares. The High Court does not seem to have attached much importance to this-circumstance. But the enjoyment of the subsequent acquisitions is strong evidence of the fact, the Subordinate Judge has found that they brought them in those shares and enjoyed them in those shares. It has been strongly contended, on behalf of the plaintiffs, that Narayana was of age in 1895 and was not a party to the partition, and is, therefore, not bound by it. But it is conclusively proved that Narayana acquiesced in and adopted the acts of his father not only in his life-time, but also since his death. He cannot now turn round and repudiate the division made in 1895. On the whole, their Lordships are of opinion that the view taken by the High Court of what took place in that year cannot be sustained."

28. There remain now the two questions, one relating to the validity of the two gifts made by Lakshmivaraha to the fourth defendant, Ponnu Ammal. The first is an assignment of Rs. 5,000 out of the money which fell to the share of Lakshmivaraha due from Thiruvaduthurai Mutt.

29. This was done at the instance of Laksmivaraha. The other is an assignment of a usufructuary mortgage held by him. In the aggregate the two sums amount to Rs. 8,000. The father has undoubtedly the power under the Hindu Law of making within reasonable limits, gifts of immoveable property to a daughter. In one case the Board upheld the gift of a small share of immoveable property on the ground that it was not shown to be unreasonable. In the present case, the gifts relate to sums of money. The only question is whether they were reasonable. Both the Courts in India have answered the question in the affirmative and their Lordships have no materials or ground to hold otherwise.

30. Regarding the prayer for the allotment upon partition of Rs. 2,000 for the marriages of plaintiffs 2 and 3 the High Court disallowed the claim in respect of the prospective marriage, but allowed it for the expenses of the marriages that took place before the decree in the first Court, on the ground that the joint family status was not dissevered until the decree for partition, and that the joint family liability continued until then. This view is opposed to the law laid down in the case of *Girja Bai v. Sadashiv Dhundiraj* [2] where it was held expressly that under the law of Mitakshara, to which the parties in the present case are subject, an unambiguous and definite

intimation of intention on the part of one member of the family to separate himself and to enjoy his share is severally has the effect of creating a division of the interest which, until then, he had held in jointness. This intention was clearly intimated to the co-parceners when the plaintiff Narayana served on them the notice Ex. II on the 30th July, 1909. That notice effected a separation so far as his branch of the family was concerned, and no obligation rested on the joint family in respect of his sons' marriages. The decree of the Subordinate Judge dismissing the claim was therefore correct.

31. As regards the properties in Schs. XI and XIII there are not sufficient materials before their Lordships to determine whether they belonged to the joint family or formed the exclusive property of the plaintiffs. It will be for the first Court to decide the question upon propar materials when giving effect to the decree for partition. But the parties would be well advised to settle it amicably.

32. It is admitted that the land allotted to the widow of Subramania Annavi (defendant No. 5) on her decease, became divisible among the heirs of her husband, in other words the male members of the family parties to this action. To this extent the declaration made by the Subordinate Judge will be varied. The High Court directed in its discretion that each party should bear his own costs. With that direction their Lordships do not propose to interfere. But having regard to the nature of the contentions they consider that the plaintiffs must pay the costs of defendants 1, 6 and 4. The defendants 1 and 6, who alone impugned the right of defendant No. 2 to a share in the joint family properties, must pay his costs. The plaintiff's cross-appeal will be dismissed with costs.

33. Their Lordships will accordingly humbly advise His-Majesty to set aside the decree of the High Court to restore the decree of the Subordinate Judge, subject to the above variation, with the above directions as to costs.

Appeal allowed

1. (1866) 11 MIA 75 : 8 WR 1 : 1 Suther 657 : 2 Sar 218 (PC)

2. AIR 1916 PC 104: 43 Cal 1031 : 43 IA 151 (PC)