

MYSORE HIGH COURT

Mallappa Fakirappa Sanna Nagashetti

Vs

Shivappa

Regular Appeal (B) No. 276 of 1956, with Misc. Appeal No.47 of 1957, Dharwar in Spl. Suit No.41 of 1954 and Spl. Misc. Appeal No.4 of 1956

(M. Sadasivayya and Ahmed Ali Khan, JJ.)

04.12.1961

JUDGMENT

Sadasivayya, J.

1. This Regular Appeal is against the judgment and decree to Special Civil Suit No.41/54 on the file of the Civil Judge, Senior Division at Dharwar.

2. Plaintiff Shivappa brought the suit before the lower Court, for partition and possession of the suit properties which consisted of some lands, three houses and certain movables. The plaintiff's case was that Fakiravva, defendant No.2 had taken him in adoption on 14-8-1952 to her (defendant 2's) husband Channappa who appears to have died some thirty years prior to the institution of the suit. One Fakirappa (who is stated to have died shortly after the death of Channappa) was the father of the said Channappa. Defendant No.1 was another son of the said Fakirappa by his Udki wife Fakiravva, while Channappa was Fakirappa's son by his regularly married wife Iravva. Defendant No.3 had been impleaded on the ground that though he had no right to any of the suit properties, he had been in possession of the lands claiming to be a tenant under defendant No.1. Defendant No.4 was no other than Fakiravva the mother of defendant No.1. The defendants did not admit the alleged adoption of the plaintiff. They had pleaded that Channappa had prohibited defendant No.2, two days before his death from taking any one in adoption. The defendants do not appear to have contested the fact that the lands were ancestral lands. They also do not seem to have disputed the fact that out of the three houses, house bearing No.159 was an ancestral house. They contested the claim of the plaintiff in respect of the remaining two houses and the movables and denied that they were liable to be partitioned. After the issues were framed, the pleader for the defendants filed two purshises which have been marked as exhibits 59 and 67. Exhibit 59 was to the effect that defendants admitted the adoption ceremony of the plaintiff and that the adoption deed may be exhibited. Exhibit 67 the purshis filed by the pleader for the defendants 1 and 3 to 5, is to the effect that they had no evidence to lead on issue No.2. The burden of proving issue No.2 was on the defendants and that issue related to the question as to whether Channappa had prohibited defendant No.2 from taking a son in adoption. From these two purshises, the learned trial Judge got the impression that plaintiff's

adoption had been conceded by the defendants. In the course of his judgment he stated as follows :

"The scope of the present suit has been considerably narrowed down, plaintiff's adoption having been conceded by contending defendants; also in view of their abandoning their further contention that Channappa Fakirappa had prohibited Defendant No.2 from adopting a Son."

Consequently, on issue No.1 which related to the question whether the plaintiff was validly adopted, the finding of the trial Judge was that it was conceded. On the second issue which related to the question as to whether Channappa had prohibited his wife defendant No.2 from taking a son in adoption, the finding of the trial Judge was that this contention was abandoned. He held that the plaintiff was the legally adopted son of Channappa and that he was entitled to a 1/3rd share in the suit properties both immovable and movable. It is against this decree passed by the learned Civil Judge that defendants 1, 3 and 4 have preferred this appeal.

3. In this appeal, the decree in so far as it relates to the partition of the lands has not been contested; it is only the correctness of the decree in so far as it relates to the three houses and the movables, that has been contested. The correctness of the finding that the plaintiff was the adopted son has also been attempted to be challenged on certain grounds, which will be shortly mentioned.

4. The finding of the trial Court that the plaintiff is the legally adopted son of Channappa is largely due to the two purshises referred to above, which have been filed on behalf of the defendants. Sri Venkataramiah appearing for the appellants, contended that the lower court ought not to have placed reliance on these two purshises viz. Exhibits 59 and 67. In this connection, Sri Venkataramiah drew our attention to ground No.4 in the appeal memo which is as follows :

"That the lower Court was wrong in relying on the purshises given by the pleader of the appellants, inasmuch as they were contrary to the authority and instructions of the appellants." On the strength of this ground of appeal Sri Venkataramiah attempted to contend that the two purshises had been filed by the pleader for the contesting defendants, without any authority from them and contrary to their instructions. Apart from such a ground being taken in the memo of appeal, Sri Venkataramiah was unable to point out any material, which supports such a contention. The appellants have not filed even an affidavit in support of this allegation that their pleader had acted contrary to their instructions in filing these two purshises. Ordinarily, a pleader engaged to conduct a case on behalf of a party, is presumed to have acted only in the interest of the party that has engaged him. Apart from the ground mentioned in the appeal memo, no material has been placed before us which could displace that presumption. A mere allegation of this kind, made for the first time in the appeal memo, would not be sufficient to convince the court that a party's pleader has acted contrary to the instructions of the party.

It was further contended by Sri Venkataramiah that the pleader for the contesting defendants, did

not have the legal competence to make the concessions set out in the two purshises Exhibits 59 and 67. In support of this argument of his, Sri Venkataramiah has cited two decisions. The first of these is a decision of the former High Court of Mysore and is reported in *Hutcheeregowda v. Sanjeevagowda*¹, The question for decision in that case was, as to whether a compromise entered into by a lawyer was binding on the party for whom he had been appearing in the litigation. It was observed that even in the case of an express authority in writing, the general power to conduct the case cannot imply a specific power authorising the Advocate to agree to compromise on his own responsibility. It was, however, held in that case that the compromise entered into by the lawyer was binding on the party that had engaged him, as it was found that in his Vakalath express authority to compromise had been given. This decision which deals with the competence of a lawyer to enter into a compromise on behalf of his client, is not of much use for the purposes of the present case in which there is no question of any compromise having been entered into by the pleader for the contesting defendants. The second case cited by Sri Venkataramiah is a more recent decision; it is a decision of Malimath, J. reported in *Sakrappa Neelappa v. Shidramappa Gangoppa*², In that case, a pleader by name Sri Bendigeri who held the vakalath of a party, had engaged another Pleader Sri Kambli to plead the case of the party. While so pleading, Sri Kambli gave up a part of the case of the party who had given Vakalath to Sri Bendigeri. It was held that in so giving up a part of the case, Sri Kambli acted in excess of his authority and that the party was not bound by this act of Sri Kambli. It appears to us, that his Lordship cannot be understood to have decided in that case, the question as to whether a pleader holding a proper Vakalath from a party, was or was not entitled to give up, at his discretion, a part of the case of his party. As a matter of fact, his Lordship has observed as follows, at paragraph 14 of his judgment :

"It is not necessary for me to decide here whether this could or could not be done by the pleader who has a Vakalath and who is entitled to act on behalf of the party. All that I need decide for the purpose of this case is that a person who has no such authority and one who is merely pleading cannot take this liberty. If he did so, it is beyond the scope of mere pleading."

Further, towards the end of para 15 of his judgment, his Lordship reiterated that the lawyer had no authority since he held no Vakalath. Therefore, that was a case in which the lawyer who had been engaged merely to plead, gave up a part of the case of the party; he had no power or authority to do so. The circumstances of the present case, are very much different from those of the case dealt with by his Lordship Malimath, J. In the present case, the pleader who conducted the case in the trial Court on behalf of the present appellants, held a Vakalath from them. Sri Datar pointed out that in this Vakalath the Pleader has been authorised by words of sufficient amplitude, in order to enable him to do all that was necessary for the conduct of the case. Sri Datar read to us the Vakalath which had been given by the present appellants to their Pleader before the trial Court. The Pleader has been authorised in the following terms (Portion in Kannada script omitted - Ed.) : * * * * *

¹ AIR 1954 Mys167

²1959-37 Mys LJ 683 : AIR 1960 Mys 217

It is difficult to say that a Pleader who had such full authority in the conduct of the case, did not have the power to give up a part of the case, which in his discretion, was not useful to be pressed on behalf of the party. In this connection, Sri Datar has brought to our notice the decision reported in *Venkata Narasimha Naidu v. Bhashyakarlu Naidu*³, That was a decision of a

Bench consisting of Moore and O'Farrell, JJ. At Page 543, Moore, J. stated as follows :

"The only point for consideration is as to whether it was within the ordinary powers given to the vakils for the conduct of the suit to abandon an issue when they, whether rightly or wrongly, arrived at the conclusion that their contentions as to it were untenable. I am clearly of opinion that this question must be answered in the affirmative. It must be held that a vakil appointed to conduct a case on behalf of his client has the power to ask for an issue or to abandon an issue, to get a witness summoned or to dispense with his evidence. Without such powers no case could be tried without frequent adjournments and endless references to the parties."

At page 547 the other learned Judge O'Farrell stated as follows :

"there is, further, no allegation of fraud or misconduct on the part of the vakils. The simple question, then, is whether a pleader's general powers in the conduct of a suit include the abandonment of an issue which, in his discretion, he thinks it inadvisable to press. No case has been cited which, in my opinion, goes the full length contended for by the learned Counsel for the appellant of declaring, in distinct terms, that a pleader has no such general authority. On the contrary, it was held in a case decided by the Privy Council in 1839 (*Rajinder Narain Rao v. Bijai Govind Sing*⁴, that the admission and consent of a vakil made with due authority (which would appear to mean properly authorised to conduct proceedings in the suit) will bind his client though not present at the time of making it".

The above Madras case, on appeal, came before the Privy Council and the decision of the Privy Council is reported in *Venkata Narasimha Naidu v. Bhashya Karlu Naidu*⁵, Adverting to the view taken by the Madras High Court on this question, their Lordships of the Privy Council observed, at page 79, as follows :

"It was one of the grounds of appeal to the High Court that the Vakils exceeded their authority in giving up this issue; but the High Court held that a vakil's general powers in the conduct of a suit include the abandonment of an issue which, in his discretion, he thinks it inadvisable to press, and in this opinion their Lordships concur".

In the present case also, no allegations of any fraudulent or improper conduct on the part of the pleader who appeared for the present appellant, before the trial Court, have been made. He was not merely an agent for the party from whom he held the Vakalath, but he also had his responsibilities as a Legal Practitioner; he also owed a

³ ILR 22 Mad 538

⁵29 Ind App 76 (PC)

⁴2 Moo Ind App 253 (PC)

duty to the Court not to press contentions which, in his opinion, were untenable and would result merely in the waste of the time of the Court. Having regard to the fact that the pleader had been fully and unconditionally authorized to do all that was necessary for the conduct of the case on behalf of the contesting defendants, we are satisfied that it was within his

competence to have made the concessions as per Exhibits 59 and 67. We see absolutely no reason to hold that the concessions so made by their pleader, would not be binding on the appellants.

5. It was next urged by Sri. Venkataramiah that even if his contentions in respect of Exhibits 59 and 67 were not accepted, it would still be open to him to show that the adoption of the plaintiff was not valid in law. He sought to contend before us that by virtue of Act No.1 of 1935 of the Sangli State, any adoption by defendant No.2 would not be valid without the consent of defendants 1 and 4. The original of this Act is in Marathi. A translation of the relevant portion of this Act is to be found in a decision of this Court reported in *Ramappa Adivappa v. Danawa*⁶, Sri Venkataramiah brought to our notice that by virtue of explanation (iii) to Section 1 of that Act, a widow unless there is partition could not make an adoption without the consent of the other 'Sahabgaidars' (equivalent to coparceners). When the Hindu Women's Right to Property Act, 1937, was extended to Sangli State under the Indian States (Application of Laws) Order, 1948, Sangli Act No.1 of 1935 stood repealed, being the law corresponding to the extended Act viz., the Hindu Women's Right to Property Act, 1937. The contention of Sri Venkataramiah is to the effect that this restriction which had been placed by the Sangli Act on the power of the widow, viz., the restriction in the matter of obtaining the consent of the coparceners before making an adoption, continued even after the repeal of the Sangli Act. His argument is that though the adoption of the plaintiff was made in the year 1952, this restriction on the power of the second defendant continued and that in the absence of any proof to the effect that the consent of the other 'sahabgaidars' viz., defendant Nos.1 and 4 had been obtained, the adoption could not be legally valid. Sri Datar objected to this contention being put forward by Sri Venkataramiah; this objection was raised on the ground that the written statement filed by the present appellants before the lower Court did not contain any allegation on the basis of which it could be argued that the provisions of the Sangli Act were applicable and that on account of the failure to obtain the consent of the other 'sahabgaidars', the adoption was not valid in law. Sri Venkataramiah stated by way of reply to this objection, that defendants had questioned the legality of this adoption and that it was open to them, even at the stage of appeal, to put forward this argument in regard to the non-compliance with the requirements under the Sangli Act. We got the original written statement filed by the contesting appellants, which is in Kannada language, read out to us, to find out the exact ground which had been put forward by the contesting defendants to attack the legal validity of this adoption. The ground which has been mentioned for attacking the legal validity of the adoption, runs as follows at paragraph 4 of the written statement (Portion in Kannada Script omitted-Ed.)

* * * *

It is seen from what is stated above that the ground on which it is alleged that the adoption is legally invalid, is because it is contrary to the prohibition imposed by the

⁶39 Mys LJ 674

deceased husband. It is not stated that because of any other circumstance the adoption is not valid in law. Therefore, the contention of Sri Datar is that the only ground put forward in the written statement of the contesting defendants to attack the legal validity of the adoption, is that it was done in contravention of the prohibition which had been imposed by the husband of defendant No.2. It is urged by Sri Datar that, in these circumstances, the appellants should not be allowed, at the stage of appeal, to show that the alleged adoption was not valid in law on some ground which has not at all been put forward in the written statement and which the plaintiff had no opportunity to meet in the court of trial. It appears to us, that there is much force in this objection

put forward by Sri Datar. In support of his argument that it was open to him now to raise a legal contention about the invalidity of the adoption even though the appellants had not put forward that specific contention in the lower Court, Sri Venkataramiah relied on certain observations made by Malimath J. in *Gurupadayya v. Shivalingayya*⁷, The observations relied on by Sri Venkataramiah are as follows :

".....The learned Advocate for the respondent contends that the plaintiff ought to have mentioned this ground in the plaint itself. x x x. He, therefore, urges that the learned Advocate for the appellant should not be permitted to base his case on this argument. In my opinion, there is not much force in this contention. x x x x. The material facts necessary for the plaintiff to put his case was merely that he is related to the last male holder and that he is the nearest heir. This he has done by putting forth the genealogy which is now admitted by the other side. On that ground alone, it was sufficient for him to pray for a relief of possession of the properties. If he has mentioned that defendant 1 contends that he is the adopted son and has further contended that the adoption did not take place and that it is invalid, he has done what was not strictly necessary. Even without this averment in the plaint, it would have been for defendant 1 himself to have pleaded that he is the adopted son and that the adoption is valid, as defense to the suit. There was thus no necessity for the plaintiff to make any averment about the invalidity much less about the grounds of invalidity of the adoption. Defendant 1 who sets up the adoption has not only to prove the factum of adoption but also the validity of adoption".

But, these observations of his Lordship must be taken to have been made in the context and the circumstances of that case. It would appear that the particular contention with which his Lordship had to deal with in that Second Appeal, had been put forward in both the courts below and had been considered by both those Courts. The question was as to whether under the provisions of a Jamkhandi Act, the consent of the coparceners had been obtained for making the adoption alleged by the defendant No.1 of that case. That question seems to have been argued before the trial Court as well as before the first appellate Court. There was no surprise caused to the opposite party by such a contention being advanced in the Second Appeal. As a matter of fact, Malimath J. repelled in that case, the contention that the opposite side had been taken by surprise. It was in the context of those circumstances that his Lordship Malimath J. made the observations above referred to. We do not understand his Lordship's observations as laying down a broad proposition to the effect that even when the pleadings in the case do not give rise to a particular legal contention and

⁷ Second Appeal No.82 of 1956 (Mys)

when such a contention has not been put forward before the trial Court and the opposite party had no opportunity to meet the same, yet it could, for the first time, be raised, as a matter of right before the Court of appeal. In another Second Appeal viz., *K.H. Chandrappa v. S. Rudrappa*⁸, Narayana Pai J. has stated as follows :

"I am not, however, prepared to say that a defendant, who has merely raised a general plea that the suit is not maintainable without specifying the grounds on which the maintainability of the suit is sought to be challenged and without getting the trial Court to

frame an issue thereon, can be permitted to press that plea in the first and the second appellate Courts by stating reasons in support of it which he has totally omitted to do in his written statement".

The reason for this view of his Lordship, is indicated by what he has stated later on in the same judgment and which is as follows :

"..... the manner in which they have set out their case in the written statement and their failure to insist upon a specific issue being raised on the claim now made on their behalf, certainly support an argument on behalf of the respondents that if the plea had been raised in that form they would have adduced evidence to controvert the same. This argument on behalf of the respondents cannot in my opinion, be described as merely a technical one. The requirement of the law that a party should state his case clearly and get the necessary issues raised is not a mere technicality but is founded upon the sound principle that every party to litigation must be made fully aware of the contentions of the other parties, so that he may have an opportunity to meet it fully".

We find ourselves in full agreement with the above view taken by Narayana Pai J. In a decision of the Madhya Bharat High Court reported in *Madhav Rao v. Netram*⁹ it has been held that where a party challenges an adoption by a bare denial, the denial can be taken only of the fact of adoption and not of its legal validity and if the party does not raise any objection as to the validity of adoption then he cannot be permitted to urge that there was no evidence to show that the adoption, if it did take place, was not valid in law and further that where a party desires to challenge the validity of adoption, he must specifically plead and state the grounds of invalidity of the alleged adoption. In the present case, the only ground upon which the legal validity of the plaintiff's adoption has been attacked is that it contravened the prohibition imposed by the deceased husband of defendant No.2. When the defendants abandoned their contentions to the effect that the husband had prohibited this adoption, the very ground on which the legal validity of the adoption had been attacked, disappeared. There was absolutely no indication in the written statement of the defendants, of any contention to the effect that on account of want of consent of the 'sahabgaidars' under the Sangli Act, the adoption was not valid in law. No argument on the basis of alleged non-compliance with the provisions of the Sangli Act, was ever advanced before the trial court. Even amongst the 20 grounds of appeal that have been relied upon in the present appeal, there is not even a mention of the said Sangli Act. Under

⁸ S.A. 91 of 1956 (Mys)

⁹ AIR 1957 Mad Bha 179

these circumstances, there is very great strength in the objection taken by Sri Datar to the effect that if Shi Venkataramiah were to be allowed to address this argument, the respondents would be taken completely by surprise. If this was a ground on which the parties desired to rely, it should have been properly put forward in their written statement. The case before the trial court has not been fought on this ground, but on entirely different grounds. Having regard to all these circumstances, we uphold the objection raised by Sri Datar and we have declined to permit Sri Venkataramiah to urge the contention that on account of the alleged non-compliance with the requirements of the said Sangli Act, the adoption is legally invalid. We have, therefore, proceeded to decide this appeal, only on those grounds on which the parties were at issue before

the trial Court.

6. As a result of what has been stated above, the position is that the factum of plaintiff's adoption has been admitted as per Exhibit 59 and the only ground on which the legal validity of this adoption had been attacked has disappeared by reason of the abandonment of the contention that there was a prohibition by the husband. In these circumstances, the finding of the trial Court that the plaintiff is the validly adopted son of Channappa, should be maintained. We confirm the said finding.

7. So far as the houses are concerned, the second defendant who has been examined as witness No.1 for the plaintiff, has stated in the course of her evidence that two of the suit houses were ancestral houses. She has admitted that she does not know who purchased the third house and when. This third house is House No.163. This is the only evidence on the side of the plaintiff, so far as the houses are concerned. In view of the above said admission of defendant No.2 to the effect that she does not know who had purchased house No.163 and as to when it was purchased, Sri Venkataramiah has contended that there is not sufficient evidence to hold that house No.163 belonged to the joint family. It also appears from what is stated in the judgment of the trial court, that in respect of this house the plaintiff's pleader had submitted that the plaintiff had to surrender his claim. Even apart from this submission made by the plaintiff's pleader, we are in agreement with the contention of Sri Venkataramiah that the evidence in the case does not justify a finding to the effect that House No.163 is a joint family property liable to partition. The claim of the plaintiff for partition of house No.163 has to be negated. House No.163 will be omitted from the decree for partition which has been passed by the trial court. So far as the movables are concerned, the contention of Sri Venkataramiah is, that all these movables were in the house occupied by defendant No.3 and that there is no sufficient evidence to show that these movables belonged to the joint family of the plaintiff and defendant No.1. But, as pointed out by Sri Datar, though a number of items of movables had been detailed in the plaint, the defendants in their written statement claimed only one cart and bullocks as belonging to them. They did not make any specific allegation to the effect that the other items of movable property were not Joint Family property. There is no satisfactory evidence one way or the other in respect of the movables. But, in view of the fact that the denial of the defendants in their written statement is specifically in respect of one cart and the bullocks, it appears to us that it would be proper to hold that only the cart and the bullocks have not been proved to be joint family properties. The cart and the bullocks will not be liable for partition and they will be omitted from the decree for partition passed by the trial court. The decree passed by the trial court shall stand modified accordingly, excluding there from house No.163 and one cart and the bullocks (or, alternatively, the value of the cart and the bullocks).

8. There is one other question which arises for decision in this appeal, consequent on the death of the 4th defendant subsequent to the filing of this appeal. From the affidavit of respondent No.1 dated 6-8-1960 filed in this appeal, it is seen that defendant No.4 died on 25-10-1958. The defendant No.4 had been granted a 1/3rd share in the decree passed by the trial court. As contended by Sri Venkataramiah consequent on the Hindu Succession Act of 1956 coming into force, the 4th defendant became the full owner under Section 14 of the that Act, of her 1/3rd share. (Her 1/3rd share will be only in those properties which have been held to be liable for partition). Both the 1st appellant (i.e., defendant No.1) as well as the 1st respondent (Plaintiff) claim to be legal representatives of the deceased 4th defendant. In the early stages of this appeal

it has been ordered (on 6-9-1960) that this question as to who should be the legal representative of the deceased 4th defendant, would be decided at the time of the hearing of the appeal. We have heard the learned Advocates on both the sides and we have reached the conclusion that it is the defendant No.1 that will be the legal representative and heir of deceased 4th defendant. It is not disputed by the learned Advocate on both the sides that the question as to who is the heir of the deceased 4th defendant, should be decided in accordance with Section 15 of the Hindu Succession Act, 1956. The relevant part of that Section is sub-section (1) (a) which runs as follows :

"15. (1) The property of the female Hindu dying intestate shall devolve according to the rules set out in Section 16, -

(a) Firstly, upon the sons and daughters (including children of any predeceased son or daughter) and the husband;"

It is agreed by the learned Advocates on both the sides that the claim of the plaintiff to succeed as heir to the deceased 4th defendant, depends upon as to whether, a step-son is included in the expression 'sons' in Section 15 (1) (a). Whereas the defendant No.1 is the son of deceased defendant No.4, the plaintiff is the son of a step-son of the deceased defendant No.4, The contention of Sri Datar is to the effect that the expression 'son' in Section 15 (1) (a) must be understood to include also a step-son; but the contention of Sri Venkataramiah is that the expression 'son' in Section 15 (1) (a) cannot be properly understood to include a step-son of the deceased. It is further pointed by Sri Venkataramiah that so far as a step-son of a deceased female is concerned, the step-son would only come under Section 15 (1) (b), as the heir of the husband of the deceased female. We find that there is much force in this argument advanced by Sri Venkataramiah. In the absence of any definition or explanation to the effect that the word 'son' would also include a step-son, that word should be given its natural meaning; if so, a son of a deceased female would mean a male issue of the body of that deceased female. (It may also include a boy taken in adoption, who, in law, stands on the same footing as a natural son; but, with this question, we are not at present concerned). The position, therefore, is that the plaintiff who is a son of the step-son of the defendant No.4, cannot claim to be a son of the deceased 4th defendant. As the son of a step-son, he may have the right to succeed under Section 15 (1) (b) of the Hindu Succession Act, as the heir of the husband of the deceased defendant No.4; but, defendant No.1 being the son of the deceased defendant No.4, has the right to succeed under Section 15 (1) (a) and would be the preferential heir. In the 12th Edition of Mulla's 'Principles of Hindu Law', it is stated, with reference to Section 15 of the Hindu Succession Act, at page 984, as follows:

"A 'step-son' is not entitled as 'son' to inherit to his stepmother as one of the heirs under this Entry. But he can succeed to her property as an heir of her husband under Entry (b)".

For the reasons above stated, we hold that it is the defendant No.1 that is the legal representative and heir entitled to succeed to the 1/3rd share of his deceased mother the defendant No.4; the same shall be allotted, at the partition, to defendant No.1, in addition to his own 1/3rd share.

9. Subject to the modification above stated, the decree of the trial court shall stand confirmed. Having regard to the fact that both the parties have partly succeeded in their contentions in this

appeal, it is ordered that parties shall bear their own costs in this appeal.

10. By consent of the learned Advocates on both the sides, it is ordered that the above judgment in this appeal shall govern Miscellaneous Appeal No.47 of 1957, which also is between the same parties; it is further ordered, by consent of both the Advocates that the order under appeal in Miscellaneous Appeal No.47 of 1957 shall stand modified in accordance with the above judgment in this Regular Appeal. Parties will bear their own costs in that Miscellaneous Appeal also.

Decree modified.