A

PUTTARANGAMMA & 2 ORS.

v.

M. S. RANGANNA & 3 ORS.

February 8, 1968

B [J. C. SHAH AND V. RAMASWAMI, JJ.]

Hindu Law—Joint family—Unilateral decalration to separate—Communicated to other members of family—Declaration withdrawn—Effect.

The *karta* of a joint Hindu family fell ill. He had no male issue and in order to safeguard the interests of the appellant and fourth respondent, who were his daughters, he issued registered notices to the other members of the jont family declaring his unequivocal intention to separate from them. Later, he decided to withdraw the notices and instructed the postal authorities not to forward them, but, the unequivocal declaration of his intention to separate was conveyed to the other members of the joint family and they had full knowledge of such intention. A few days thereafter he instituted a suit for partition and possession of his share of the property. The plaint was prepared by a responsible advocate, who explained the contents to the plaintiff (the *karta*), who was conscious and in full possession of his mental faculties, had his thumb impression affixed on the plaint and Vakalatnama, signed them both and had them filed in court. After the suit was filed on the same day, the plaintiff died.

The trial court decreed the suit, but the High Court, in appeal, reversed the decree.

In appeal to this Court,

HELD: The mere withdrawal of the plaintiff's unilateral declaration of intention to separate, which already had resulted in his division in status because of the communication of the intention to the other members, did not nullify its effect so as to restore the family to its original joint status, or amount to an agreement to reunite; and the appellant and the fourth respondent, as the legal representatives of the plaintiff, were entitled to the decree. [126 G-H; 127 A-B; 129 D]

Radhakrishna v. *Satyanarayana*, (1948) 2 M.L.J. 331, approved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 322 of 1965.

Appeal from the judgment and decree dated December 5, 1960 of the Mysore High Court in Regular Appeal No. 81 of 1956.

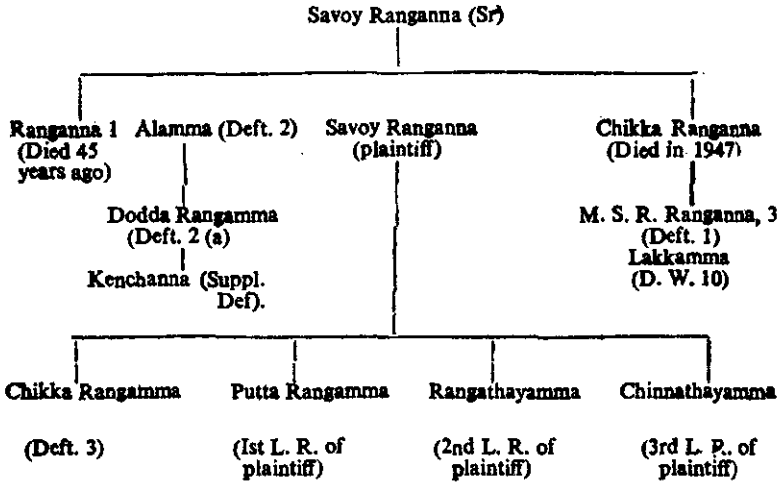
A. K. Sen and *R. Gopalakrishnan*, for the appellants.

H. R. Gokhale, K. R. Chaudhuri and *K. Rajendra Chaudhri*, for respondent No. 1.

The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought by certificate from the judgment of the Mysore High Court dated December 5, 1960 in R. A. No. 81 of 1956.

The appellants and respondent No. 4 are the daughters and legal representatives of Savoy Ranganna who was the plaintiff in O.S. 34 of 1950-51 instituted in the court of the District Judge, Mysore. The suit was filed by the deceased plaintiff for partition of his share in the properties mentioned in the schedule to the plaint and for granting him separate possession of the same. Respondent No. 1 is the brother's son of the Plaintiff. The relationship of the parties would appear from the following pedigree :



The case of the plaintiff was that he and the defendants lived together as members of a Joint Hindu family till January 7, 1951, plaintiff being the karta. The plaintiff had no male issue but had only four daughters, Chikka Rangamma, Putta Rangamma, Rangathayamma and Chinnathayamma. The first 2 daughters were widows. The fourth daughter Chinnathayamma was living with her husband. Except Chinnathayamma, the other daughters with their families had been living with the joint family. The plaintiff became ill and entered 'Sharda Nursing Home' for treatment as an in-patient on January 4, 1951. In order to safeguard the interests of his daughters the plaintiff, Savoy Ranganna issued a notice on January 8, 1951 to the defendants declaring his unequivocal intention to separate from them. After the notices were registered at the post office certain well-wishers of the family intervened and wanted to bring about a settlement. On their advice and request the plaintiff notified to the post office that he intended to withdraw the registered notices. But as no agreement could be subsequently reached between the parties the plaintiff instituted the present suit on January 13, 1951 for partition of his share of the joint family properties. The suit was contested mainly by

A respondent no. 1 who alleged that there was no separation of status either because of the notice of January 8, 1951 or because of the institution of the suit on January 13, 1951. The case of respondent no. 1 was that Savoy Ranganna was 85 years of age and in a weak state of health and was not in a position to understand the contents of the plaint or to affix his signature or thumb B impression thereon as well as on the Vakalatnama. As regards the notice of January 8, 1951, respondent no. 1 asserted that there was no communication of any such notice to him and, in any case, the notices were withdrawn by Savoy Ranganna unconditionally from the post office. It was therefore contended that there was no disruption of the joint family at the time of the death of Savoy Ran- C ganna and the appellants were not entitled to a decree for partition as legal representatives of Savoy Ranganna. Upon the examination of the evidence adduced in the case the trial court held that Savoy Ranganna had properly affixed his thumb impression on the plaint and the Vakalatnama and the presentation of the plaint was valid. The trial court found that Savoy Ranganna was not D dead by the time the plaint was presented. On the question whether Savoy Ranganna was separate in status the trial court held that the notices dated January 8, 1951 were a clear and unequivocal declaration of the intention of Savoy Ranganna to become divided in status and there was sufficient communication of that intention to respondent no. 1 and other members of the family. The trial court was also of the opinion that at the time of the issue E of the notices dated January 8, 1951 and at the time of execution of the plaint and the Vakalatnama dated January 13, 1951 Savoy Ranganna was in a sound state of mind and conscious of the consequences of the action he was taking. The trial court accordingly granted a decree in favour of the appellants. Respondent no. 1 took the matter in appeal to the Mysore High Court which by its F judgment dated December 5, 1960 reversed the decree of the trial court and allowed the appeal. Hegde, J. one of the members of the Bench held that the suit could not be said to have been instituted by Savoy Ranganna as it was not proved that Savoy Ranganna executed the plaint. As regards the validity of the notice Ex. A, and as to whether it caused any disruption in the joint G family status, Hegde, J. did not think it necessary to express any opinion. The other member of the Bench, Mir. Iqbal Husain, J. held that the joint family of which the deceased Savoy Ranganna was a member had not been disrupted by the issue of the notice dated January 8, 1951. The view taken by Mir Iqbal Husain, J. was that there was no proof that the notice was communicated either to respondent no. 1 or other members of the family and, H in any event, the notice had been withdrawn by Savoy Ranganna and so there was no severance of joint status from the date of the notice.

The first question to be considered in this appeal is whether Savoy Ranganna died as a divided member of the joint family as alleged in the plaint. It is admitted that Savoy Ranganna was very old, about 85 years of age and was ailing of chronic diarrhoea. He was living in the family house till January 4, 1951 when he was removed to the Sharda Nursing Home where he died on January 13, 1951 at 3 p.m. According to the case of respondent no. 1 Savoy Ranganna had a paralytic stroke in 1950 and was completely bed-ridden thereafter and his eyesight was bad for 5 to 6 years prior to his death. It was alleged in the written statement that Savoy Ranganna was unconscious for some days prior to his death. The case of respondent no. 1 on this point is disproved by the evidence of D.W. 6, Dr. Venkata Rao who was in charge of the Sharda Nursing Home on the material dates. This witness admitted that the complaint of Savoy Ranganna was that he was suffering from chronic diarrhoea for over five months. He was anaemic but he was not suffering from any attack of paralysis. As regards the condition of Savoy Ranganna on January 8, 1951, the evidence of P.W. 1, Dr. Subbaramiah is important. This witness is the owner of the Sharda Nursing Home and he has testified that the notice Ex. A was read over to Savoy Ranganna and after getting it read the latter affixed his thumb mark thereon. The witness asked Savoy Ranganna whether he was able to understand the contents of the notice and the latter replied in the affirmative. The witness has certified on the notice, Ex. A-1 that Savoy Ranganna was conscious when he affixed his left thumb mark to the notice in his presence. No reason was suggested on behalf of the respondents why the evidence of this witness should be disbelieved. The trial court was highly impressed by the evidence of this witness and we see no reason for taking a different view. The case of the appellants is that respondent no. 1 had knowledge of the notice, Ex. A because he was present in the Nursing Home on January 8, 1951 and he tried to snatch away the notice from the hands of P.W. 1 but he was prevented from so doing. P.W. 5, Chinnanna stated in the course of the evidence that after P.W. 1 had signed the certificate in all the three copies, respondent no. 1 and one Halappa came to the ward and tried to snatch away the notices. The first respondent tried to snatch away the copy Ex. A-1 that was in the hands of Dr. Subbaramiah and attempted to tear it. Dr. Subbaramiah somehow prevented respondent no. 1 from taking away Ex. A and handed it over to P.W. 5. The evidence of P.W. 5 with regard to the "snatching incident" is corroborated by Dr. Subbaramiah who stated that after Savoy Ranganna had executed the notices and he had signed the certificates, one or two persons came and tried to snatch the document. P.W. 1 is unable to identify the first respondent as one of the persons who had taken part in the "snatching incident". The circumstance that P.W. 1 was unable to identify respondent no. 1

A is not very material, because the incident took place about three years before he gave evidence in the court, but his evidence with regard to the "snatching incident" strongly corroborates the allegation of P.W. 5 that it was respondent no. 1 who had come into the Nursing Home and attempted to snatch the notice. There is also another circumstance which supports the case of the appellants that respondent no. 1 had knowledge of the contents of Ex. A and of the unequivocal intention of Savoy Ranganna to become divided in status from the joint family. According to P.W. 5 respondent no. 1 and his wife and mother visited Savoy Ranganna in the Nursing Home later on and pressed him to withdraw the notices promising that the matter will be amicably settled. Sowcar T. Thammanna also intervened on their behalf. Thereafter the deceased plaintiff instructed his grandson P.W. 5 to withdraw the notice. Accordingly P.W. 5 prepared two applications for the withdrawal and presented them to the postal authorities. The notice, Ex. A meant for the first respondent and Ex. E meant for the original second defendant were withheld by the postal authorities. These notices were produced in court by the postal authorities during the hearing of the case. In our opinion, the evidence of P.W. 5 must be accepted as true, because it is corroborated by the circumstance that the two notices, Exs. A and E were intercepted in the post office and did not reach their destination. This circumstance also indicates that though there was no formal communication of the notice, Ex. A to the first respondent, he had sufficient knowledge of the contents of that notice and was fully aware of the clear and unequivocal intention of Savoy Ranganna to become separate from other members of the joint family.

It is now a settled doctrine of Hindu Law that a member of a joint Hindu family can bring about his separation in status by a definite, unequivocal and unilateral declaration of his intention to separate himself from the family and enjoy his share in severalty. It is not necessary that there should be an agreement between all the coparceners for the disruption of the joint status. It is immaterial in such a case whether the other coparceners give their assent to the separation or not. The jural basis of this doctrine has been expounded by the early writers of Hindu Law. The relevant portion of the commentary of Vijnaneswara states as follows :

"तथाच सरजस्कायां मातरि सस्पृहे च पितरि विभागम् अनिच्छत्यपि पुत्रेच्छया पैतामहद्रव्य विभागो भवति"

[And thus though the mother is having her menstrual courses (has not lost the capacity to bear children) and the father has attachment and does not desire a partition, yet by the will (or desire) of the son a partition of the grandfather's wealth does take place]"

Saraswathi Vilasa, placitum 28 states :

"अनेन ज्ञायते परिभाषां बिना संकल्पमात्रेणपि विभाग सिद्धिः ।
यथा पुत्रिकाकरणम् परिभाषां बिना संकल्पमात्रात्सिध्यति इति ।।"

[From this it is known that without any speech (or explanation) even by means of a determination (or resolution) only, partition is effected, just an appointed daughter is constituted by mere intention without speech.]"

Viramitrodaya of Mitra Misra (Ch. II. pl. 23) is to the following effect :

"अत्रच पुत्रेच्छया यो जीवद्विभागो यश्चाजीवद्विभागः स एकेच्छयापि भवत्यविशेषात् ।"

[Here too there is no distinction between a partition during the lifetime of the father or after his death and partition at the desire of the sons may take place or even by the desire (or at the will) of a single (coparcener)]."

Vyavahara Mayukha of Nilakantabhatta also states :

"द्रव्यसामान्याभावेपि त्वत्तोहं विभक्त इति व्यवस्थामात्रेणपि भवत्येव विभागः ।
बुद्धिविशेषमात्रमेव हि विभागः ।। तत्पैवामिव्यञ्जकेयं व्यवस्था ।।"

[Even in the absence of any common (joint family) property, severance does indeed result by the mere declaration 'I am separate from thee' because severance is a particular state (or condition) of the mind and the declaration is merely a manifestation of this mental state (or condition).]" (Ch. IV, S. iii-I).

Emphasis is laid on the "budhi visesha" (particular state or condition of the mind) as the decisive factor in producing a severance in status and the declaration is stated to be merely "abhivyanjika" or manifestation which might vary according to circumstances. In *Suraj Narain* v. *Iqbal Narain*(1) the Judicial Committee made the following categorical statement of the legal position :

"A definite and unambiguous indication by one member of intention to separate himself and to enjoy his share in severalty may amount to separation. But to have that effect the intention must be unequivocal and clearly expressed.....Suraj Narain alleged that he separated a few months later; there is, however, no

(1) I.L.R. 35 All. 80. (P.C.)

A writing in support of his allegation, nothing to show that at that time he gave expression to an unambiguous intention on his part to cut himself off from the joint undivided family."

In a later case—*Girja Bai v. Sadashiv Dhundiraj*(1) the Judicial Committee examined the relevant texts of Hindu Law and referred B to the well-marked distinction that exists in Hindu law between a severance in status so far as the separating member is concerned and a *de facto* division into specific shares of the property held until then jointly, and laid down the law as follows :

"One is a matter of individual decision, the desire on the part of any one member to sever himself from the C joint family and to enjoy his hitherto undefined or unspecified share separately from the others without being subject to the obligations which arise from the joint status; whilst the other is the natural resultant from his decision, the division and separation of his share which may be arrived at either by private agreement among the D parties, or on failure of that, by the intervention of the Court. Once the decision has been unequivocally expressed and clearly intimated to his co-sharers, his right to his right to have his share allocated separately from has a title is unimpeachable; neither the co-sharers can question it nor can the Court examine his conscience to find out whether his reasons for separation were well- E founded or sufficient; the Court has simply to give effect to his right to have his share allocated separately from the others."

In *Syed Kasam* v. *Jorawar Singh*(2), Viscount Cave, in delivering the judgment of the Judicial Committee, observed :

F "It is settled law that in the case of a joint Hindu family subject to the law of the Mitakshara, a severance of estate is effected by an unequivocal declaration on the part of one of the joint holders of his intention to hold his share separately, even though no actual division takes place : and the commencement of a suit for G partition has been held to be sufficient to effect a severance in interest even before decree."

These authorities were quoted with approval by this Court in *Addagada Raghavamma v. Addagada Chenchamma*(3), and it was held that a member of a joint Hindu family seeking to separate himself from others will have to make known his intention to other H members of his family from whom he seeks to separate. The

(1) I.L.R. 43 Cal. 1031. (P.C.) (2) I.L.R. 50 Cal. 84. (P.C).

(3) [1964] 2 S.C.R. 933.

correct legal position therefore is that in a case of a joint Hindu family subject to Mitakshara law, severance of status is effected by an unequivocal declaration on the part of one of the joint-holders of his intention to hold the share separately. It is, however, necessary that the member of the joint Hindu family seeking to separate himself must make known his intention to other members of the family from whom he seeks to separate. The process of communication may, however, vary in the circumstances of each particular case. It is not necessary that there should be a formal despatch to or receipt by other members of the family of the communication announcing the intention to divide on the part of one member of the joint family. The proof of such a despatch or receipt of the communication is not essential, nor its absence fatal to the severance of the status. It is, of course, necessary that the declaration to be effective should reach the person or persons affected by some process appropriate to the given situation and circumstances of the particular case. Applying this principle to the facts found in the present case, we are of opinion that there was a definite and unequivocal declaration of his intention to separate on the part of Savoy Ranganna and that intention was conveyed to respondent no. 1 and other members of the joint famliy and respondent no. 1 had full knowledge of the intention of Savoy Ranganna. It follows therefore that there was a division of status of Savoy Ranganna from the joint Hindu family with effect from January 8, 1951 which was the date of the notice.

It was, however, maintained on behalf of the respondents that on January 10, 1951 Savoy Ranganna had decided to withdraw the two notices, Exs. A & E and he instructed the postal authorities not to forward the notices to respondent no. 1 and other members of the joint family. It was contended that there could be no severance of the joint family after Savoy Ranganna had decided to withdraw the notices. In our opinion, there is no warrant for this argument. As we have already stated, there was a unilateral declaration of an intention by Savoy Ranganna to divide from the joint family and there was sufficient communication of this intention to the other coparceners and therefore in law there was in consequence a disruption or division of the status of the joint family with effect from January 8, 1951. When once a communication of the intention is made which has resulted in the severance of the joint family status it was not thereafter open to Savoy Ranganna to nullify its effect so as to restore the family to its original joint status. If the intention of Savoy Ranganna had stood alone without giving rise to any legal effect, it could, of course, be withdrawn by Savoy Ranganna, but having communicated the intention, the divided status of the Hindu joint family had already come into existence and the legal consequences had taken effect. It was not, therefore, possible for Savoy Ranganna to get back

A to the old position by mere revocation of the intention. It is, of course, possible for the members of the family by a subsequent agreement to reunite, but the mere withdrawal of the unilateral declaration of the intention to separate which already had resulted in the division in status cannot amount to an agreement to reunite. It should also be stated that the question whether there was a B subsequent agreement between the members to reunite is a question of fact to be proved as such. In the present case, there is no allegation in the written statement nor is there any evidence on the part of the respondents that there was any such agreement to reunite after January 8, 1951. The view that we have expressed is borne out by the decision of the Madras High Court in *Kurapati Radhakrishna* v. *Kurapati Satyanarayana*(1) in which there was a C suit for declaration that the sales in respect of certain family properties did not bind the plaintiff and for partition of his share and possession thereof and the plaint referred to an earlier suit for partition instituted by the 2nd defendant in the later suit. It was alleged in that suit that 'the plaintiff being unwilling to remain with the defendants has decided to become divided and he has filed D this suit for separation of his one-fifth share in the assets remaining after discharging the family debts separated and for recovery of possession of the same'. All the defendants in that suit were served with the summons and on the death of the 1st defendant therein after the settlement of issues, the plaintiff in that action made the following endorsement on the plaint : "As the 1st defen- E dant has died and as the plaintiff had to manage the family, the plaintiff hereby revokes the intention to divide expressed in the plaint and agreeing to remain as a joint family member, he withdraws the suit.' It was held by the Madras High Court that a division in status had already been brought about by the plaint in the suit and it was not open to the plaintiff to revoke or withdraw the unambiguous intention to separate contained in the plaint so F as to restore the joint status and as such the members should be treated as divided members for the purpose of working out their respective rights.

We proceed to consider the next question arising in this appeal whether the plaint filed on January 13, 1951 was validly executed by Savoy Ranganna and whether he had affixed his thumb impres- G sion thereon after understanding its contents. .The case of the appellants is that Sri M. S. Ranganathan prepared the plaint and had gone to the Sharda Nursing Home at about 9-30 or 10 a.m. on January 13, 1951. Sri Ranganathan wrote out the plaint which was in English and translated it to Savoy Ranganna who approved the same. P.W. 2, the clerk of Sri Ranganathan has deposed to H this effect. He took the ink-pad and affixed the left thumb impression of Savoy Ranganna on the plaint and also on the Vakalatnama. There is the attestation of Sri M. S. Ranganathan on the

(1) (1948) 2 M.L.J. 331.

plaint and on the Vakalatnama. The papers were handed over to P.W. 2 who after purchasing the necessary court-fee stamps filed the plaint and the Vakalatnama in the court at about 11.30 a.m. or 12 noon on the same day. The evidence of P.W. 2 is corroborated by P.W. 5 Chinnanna. Counsel on behalf of the respondents, however, criticised the evidence of P.W. 2 on the ground that the doctor, D.W. 6 had said that the mental condition of the patient was bad and he was not able to understand things when he examined him on the morning of January 13, 1951. D.W. 6 deposed that he examined Savoy Ranganna during his usual rounds on January 13, 1951 between 8 and 9 a.m. and found "his pulse imperceptible and the sounds of the heart feeble". On the question as to whether Savoy Ranganna was sufficiently conscious to execute the plaint and the Vakalatnama, the trial court has accepted the evidence of P.W. 2, Keshavaiah in preference to that of D.W. 6. We see no reason for differing from the estimate of the trial court with regard to the evidence of P.W. 2. The trial court has pointed out that it is difficult to accept the evidence of D.W. 6 that Savoy Ranganna was not conscious on the morning of January 13, 1951. In cross-examination D.W. 6 admitted that on the night of January 12, 1951 Savoy Ranganna was conscious. He further admitted that on January 13, 1951 he prescribed the same medicines to Savoy Ranganna as he had prescribed on January 12, 1951. There is no note of the necessary data in the case sheet, Ex. I to suggest that Savoy Ranganna was not conscious on January 13, 1951. It is therefore not unreasonable assume that the condition of Savoy Ranganna was the same on January 13, 1951 as on January 12, 1951 and there was no perceptible change noticeable in his condition between the two dates. In these circumstances it is not possible to accept the evidence of D.W. 6 that Savoy Ranganna was unconscious on the morning of January 13, 1951. It was pointed out on behalf of the respondents that D.W. 7, Miss Arnold has also given evidence that the condition of Savoy Ranganna became worse day by day and on the last day his condition was very bad and he could not understand much, nor could he respond to her calls. The trial court was not impressed with the evidence of this witness. In our opinion, her evidence suffers from the same infirmity as of D.W. 6, because the case sheet, Ex. I does not corroborate her evidence. It is also difficult to believe that D.W. 7 could remember the details of Savoy Ranganna's case after a lapse of three years without the help of any written case sheet. There is also an important discrepancy in the evidence of D.W. 7. She said that on January 13, 1951 she called D.W. 6 at 12 noon since the condition of the patient was very bad, but D.W. 6 has said that he did not visit Savoy Ranganna after 8 or 9 a.m. on that date. Comment was made by Counsel on behalf of the respondents that Sri Ranganathan was not examined as a witness to prove that he had prepared

A B C D E F G H

A the plaint and Savoy Ranganna had affixed his thumb impression in his presence. In our opinion, the omission of Sri Ranganathan to give evidence in this case is unfortunate. It would have been proper conduct on his part if he had returned the brief of the appellants and given evidence in the case as to the execution of the plaint and the Vakalatnama. But in spite of this circumstance B we consider that the evidence of the appellants on this aspect of the case must be accepted as true. It is necessary to notice that the plaint and the Vakalatnama are both counter-signed by Sri Ranganathan—a responsible Advocate—and it is not likely that he would subscribe his signatures to these documents if they had been executed by a person who was unable to understand the con- C tents thereof. As we have already said, it is unfortunate that the Advocate Sri Ranganathan has not been examined as a witness, but in spite of this omission we are satisfied that the evidence adduced in the case has established that Savoy Ranganna validly executed the plaint and the Vakalatnama and that he was conscious and was in full possession of his mental faculties at the time of the execution of these two documents. It follows therefore D that the appellants and respondent no. 4 who are the daughters and legal representatives of Savoy Ranganna are entitled to a decree in the terms granted by the District Judge of Mysore.

For the reasons expressed, we hold that this appeal should be allowed, the judgment of the Mysore High Court dated December 5, 1960 in R.A. no. 81 of 1956 should be set aside and that of E the District Judge, Mysore dated October 31, 1955 in O.S. no. 34 of 1950-51 should be restored. The appeal is accordingly allowed with costs.

V.P.S. *Appeal allowed.*