

Singriah and ors. Vs. Ramanuja and ors.

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Court : Karnataka

Decided On : Mar-31-1959

Reported in : AIR1959Kant239; AIR1959Mys239; ILR1959KAR437

Judge : N. Sreenivasa Rau and ;K.S. Hegde, JJ.

Acts : Mysore Hindu Law Women's Rights Act, 1933 - Sections 8, 8(1), 8(5) and 9(1); Hindu Law

Appeal No. : Appeal No. 130 of 1953 with cross objections

Appellant : Singriah and ors.

Respondent : Ramanuja and ors.

Advocate for Def. : B.T. Ramaswamy, Adv.

Advocate for Pet/Ap. : M.P. Somashekher Rao, Adv.

Judgement :

K.S. Hegde, J.

1. The appellants in this appeal are defendants 1 and 8 to 17 in Original Suit No. 39 of 1950-51] on the file of the learned District Judge, Mysore. The first respondent is the plaintiff therein.

2. The suit is for partition and delivery of the plaintiff's 2/15th share in the plaintiff properties with past and future profits. The plaintiff claims to be the adopted son of Naranappa the deceased brother of defendant 1. The genealogical table of the family is given in appendix 'A' of the plaint. The correctness of this genealogy is not disputed excepting the fact that the plaintiff is the adopted son of Naranappa. Defendants 1 and 8 to 19 resisted the plaintiff's suit on various grounds.

As many as 14 issues were framed in the suit. The trial court has decreed the plaintiff's suit awarding him 1/9th share in the plaintiff schedule properties. Further it has allowed him profits from the date of the suit. But the determination of the quantum of profits has been left over for a separate enquiry. The Court below has come to the conclusion that the plaintiff items Nos. 10 to 12, 18, 20 and 29 to 31 are not family properties and as such the plaintiff is not entitled to any share in those items of property. It has also disallowed the plaintiff's costs as he has substantially failed in his suit.

The appellants have challenged the findings of the Court below to the extent they are against their contentions. The plaintiff in his turn has filed cross-objections disputing the findings of the trial court as regards (i) the true character of property shown in plaintiff item No. 30, (ii) has right to get past profits and (iii) costs.

3. In the course of the hearing of this appeal, several of the contentions raised by the appellants in their grounds of appeal were not pressed. Their learned Counsel focussed his arguments on the following points :

(i) the factum and validity of the adoption;

(ii) the plaintiff's right to reopen the partition effected in pursuance of the award dated 24-4-1936 and claim a share ignoring the same;

(iii) the share to which the plaintiff is entitled; and

(iv) the correctness of finding of the trial court as regards the property shown in plaintiff item No. 5.

These points as well as the points raised in the memorandum of cross-objections will be considered together.

4. We shall first take up the question of the factum and validity of the adoption. As regards the factum of adoption, we have the evidence of P.W. 1 (Gowramma) the adoptive mother, P.W. 2 (Channappa) who has married P.W. 1's sister, P.W. 8 (P. Shivlingiah) the younger brother of P.W. 1 and P.W. 4 (T. Thimmegowda alias Puttaswame Gowda), the brother-in-law of Ramalingiah, the natural father of the plaintiff. It is also evidenced by the registered adoption deed marked as Ext. A in the case.

This adoption deed is attested by a large number of persons including some of the close relations of the deceased Naranappa. The deed in question was executed on the very day of adoption. There is no reason to doubt either the genuineness of Ext. A or the correctness of the facts stated therein. The Court below has accepted the evidence of P.W. 1 to 4. Their evidence appears to be natural and convincing and we see no reason to differ from the conclusions, of the trial court.

5. Sri M. P. Somasekhara Rao, the learned Counsel for the appellants, assailed the validity of the adoption on the ground that the deceased Naranappa had not authorised his wife Gowramma to make the adoption in question. On the question of authority, the plaintiff mainly relies on the presumption arising from Section 9(1) of the Hindu Law Women's Rights Act (Mysore Act No. X of 1933). The said section reads as follows :

'9 (1) In the absence of an express prohibition in writing by the husband, his widow, or, where he has left more widows than one, the senior-most of them shall be presumed to have his authority to make an adoption.'

The plaintiff was adopted after the aforesaid Act came into force. Hence it is not disputed that he is entitled to rely on the presumption in question. But it is urged that the presumption in question is a rebuttable presumption as held in the case of *Srinivasaehar v. Lakshmikantha*, 20 Mys LJ 384 and *Kenchappa v. Siddappa*, 28 Mys LJ 20, and that the same has been rebutted by the evidence on record. In support of this contention the learned counsel for the appellants relies on the

several circumstances appearing in the case.

Those circumstances are : (1) According to the evidence of P.W. 1, her husband wanted to adopt the plaintiff during his life-time but he did not do so even though he lived for over a year after expressing his desire to adopt the plaintiff and in spite of the fact he was ailing; (2) the plaintiff was not adopted for nearly 2 years after the death of Haranappa; (3) Ramalingiah the natural father of the plaintiff who had agreed to give the plaintiff in adoption was a party to Ex. I (dated 24-9-1934) under which the arbitrators were asked to divide the family property without any reference to the proposed adoption, and (4) the award was made on 20-4-1936.

After the award, Ramalingiah tried to get the award modified through the arbitrators. It is only after he failed in his attempts to get the award modified, the present adoption came about. The learned counsel for the appellants has also invited our attention to the relevant averments in the plaint. In the plaint there is no positive averment to the effect that the deceased Naranappa had authorised his widow to make an adoption to him.

Quite curiously the 20th defendant in her statement also does not speak about the authority in question. During her examination in the Court, no questions were put to her in her examination-in-chief to elicit that she had the authority of her husband to adopt. But this lacuna was made up during her cross-examination. It may be that if the burden of proving the authority to adopt was on the plaintiff, the circumstances enumerated would have weighed against him heavily. But the law raises a presumption that the widow had the authority of her deceased husband. The contrary will have to be proved by those who disputed the authority in question.

In other words, they will have to prove a negative fact and quite obviously it is a very difficult task. The fact that Ramalingiah had his own designs in bringing about the adoption and the further fact that the adoptive mother was not diligent in carrying out the directions of her deceased husband or even the fact that the pleadings are vague are insufficient to rebut the presumption raised under Section 9 (1) of the Hindu Law Women's Rights Act. We must, therefore, hold that the adoption is proved, as the factum is fully established.

6. This takes us to the question as to what is the effect of the adoption? In this case the plaintiff has asked for a re-partition of the entire property ignoring the partition effected in pursuance of Ex. IT (award). According to him the adoption dates back to the date of death of his adoptive father, i.e. 14-7-1934. It is contended on his behalf that he was not a party either to the submission made to the arbitrators or to the award and consequently the award is not binding against him.

According to him he can ignore the award and work out his rights de hors the same. It is now well settled that though the rights of an adoptive son arises for the first time on his adoption, the adoption dates back to the date of the death of the adoptive father. In *Anant Bhikkappa v. Shantcar Ramachandra*, the Privy Council observed that the adopted son is the continuator of his adoptive father's line exactly as an aurasa son, and an adoption, so far as the continuity of the line is concerned has a retrospective effect; when-ever the adoption may be made there is no hiatus in the continuity of the line.

In the case of *Srinivas Krishnarao v. Narayan Devji* : [1955]1SCR1, the Supreme Court agreeing with the aforesaid decision of the Privy Council held that the ground on which an adopted son is entitled to take in defeasance of the rights acquired prior to his adoption is that in the eye of the law his adoption relates back, by a legal fiction, to the date of the death of his adoptive father, he being put in the position of a posthumous son.

Hence, it is clear that the adoption of the plaintiff dates back to the death of Naranappa. But does that in any manner affect the partition already effected? From Appendix A '(Genealogical tree) to the plaint, we find that in the family of the plaintiff's adoptive father, there were three main branches, i.e. the branch of Narasimhiah, the branch of Cheluviah and the branch of Puttanna. The award Ex. II primarily effected a division between these three main branches.

The first defendant was the senior most member and the manager of his branch at the time of the partition. He had agreed to the partition in question. It is not disputed that as the manager of his branch he had a right to represent his branch in a partition. He could have done so even if Naranappa had been alive on the

date of the partition. The plaintiff's right cannot be superior to that of his adoptive father Naranappa. If Naranappa could not have challenged the partition, much less can the plaintiff do so.

7. It is strenuously urged on behalf of the plaintiff that the first defendant was all the while hostile to him; their interests were mutually conflicting and hence he could not have represented the plaintiff in the proceedings leading up to the partition. The Court below has accepted this contention. But we do not think that this contention is sound. The first defendant's right to represent the branch family arises from the fact that he was the manager of his branch family and not on the basis that he was the guardian of the minor plaintiff.

Moreover, he could not have had any hostility against the plaintiff on the date of the partition as the plaintiff had not been adopted by that date. Hence there was no possibility of any conflict of interests between the first defendant and the plaintiff at the time of partition. The first defendant could not have adversely affected the plaintiff without affecting his own interest as well.

It is far-fetched to think that he could have sacrificed his own interests to spite the plaintiff, that too on the off-chance of his adoption. Any conflict of interests between him and the plaintiff could have only arisen after the adoption. We have not been shown any material from which we could conclude that the partition effected has in any manner prejudiced the rights of the plaintiff.

8. In this case we are not concerned whether the award Ex. II was validly made or not. This is not a suit to enforce the award. The factum of the partition is admitted. It may be that it was effected in pursuance of an invalid award. But still the fact of partition remains. The several branches of the quondam joint family are in possession of their respective shares ever since 1930 i.e. for over 14 years before the institution of this suit.

This partition was effected out of Court and could not have been so done without the consent of the adult members of the former family or at any-rate without the consent of the managers of the branch families. To reopen such a partition compelling reasons are required. But we have found no such reason.

9. Sri Ranganathan, the learned counsel for the plaintiff, insisted that a person adopted subsequent to a partition in any family is doathed with the right to enter his adoptive family on the basis that it is a joint family; and having so done he could work out his rights unfettered by the previous partition. In support of this contention reliance was placed on the decisions in Ramachandra Shrinivas v. Ramkrishna Krishna Rao : AIR1952 Bom463 and Gurupadappa Basappa v. Karishiddappa Shivabasappa AIR 1954 Bom 318.

We have carefully examined these decisions but we are unable to agree with the learned Counsel for the plaintiff that these decisions are authorities for the proposition contended for by him.

10. Before examining these decisions it will be useful to clear the ground by noticing certain points which have not been controverted before us As stated earlier an adoption dates back to the date of the death of the adoptive father. From this it follows that a previous partition cannot prejudice the rights of an adopted son and if it does prejudice his rights, he is entitled to work out his rights ignoring the said partition. Thus far there is no controversy. With these preliminary remarks we shall now proceed to examine the decisions in question.

11. In the case of : AIR1952 Bom463 , the material facts are as follows: One Shrinivas had two sons, Ramachandra and Krishnaji. Krishnaji died in 1930. After his death Shrinivas and Ramachandra continued to live as members of an undivided Hindu family. In about December 1932 Krishnaji's widow Sundrabai began to think of making an adoption to her deceased husband and it would appear that both Shrinivas and Ramachandra came to know about this intention of Sundrabai.

Thereupon Shrinivas and Ramachandra effected a partition between themselves on 9-12-1931. This was followed by a registered deed of partition executed on 16-12-1932. On this day itself Sundrabai adopted Ramakrishna, who was the plaintiff in that case. Shrinivas then proceeded to alienate the properties which had fallen to his share by executing two deeds of gift in favour of Ramachandra's sons Annaji and Dattatraya, and a will in favour of Ramachandra's daughter Renukabai.

On 13-12-1934, Shrinivas died and on 10-1-1936, the plaintiff brought the suit in question in which he claimed to recover his half share in the properties of the family. The defence was that the adoption itself was invalid having taken place after the partition and that in any case the adopted son was not entitled to claim any share because the coparcenary between Shrinivas and Ramachandra had been terminated by a prior partition between them.

It is unnecessary to refer to other contentions in the case. The suit was dismissed by the High Court holding that the adopted son is not entitled to challenge the partition as his adoption had taken place after the partition had been effected in his father's family and hence he is not entitled to any share. The matter was taken up in appeal to the Privy Council. The Privy Council following their decision in , reversed the decision of the High Court and remanded the suit back to the High Court to decide the points left open for decision.

The matter came before another bench of the Bombay High Court, At that stage the learned Counsel appearing for the contesting defendants contended that though the plaintiff may not be bound by the partition which took place between Shrinivas and Ramachandra, the partition does bind those who are parties to the same and the only right which the plaintiff got on his adoption was to claim the 1/3rd share in the properties of the family to which his adoptive father was entitled.

It was further contended that the partition between Shrinivas and Ramachandra irrevocably caused disruption of jointness between them and both of them thereafter held their properties as separate owners or at least as tenants in common and as such Shrinivas was entitled to alienate his 1/3rd share in the properties during his life-time. Consequently it was urged that the plaintiff would be entitled to no more than 1/3rd share in the properties in the suit. Gaiendragadkar J., who delivered the judgment of the Court after exhaustively reviewing the case law on the point expressed himself as follows:

'In our opinion, the plaintiff, whose adoption relates back to the date of his adoptive father's death, must be taken to have been in his mother's womb at the time of the partition in 1932. In that view, the present suit must be treated as a suit for reopening partition, and in reopening partition the shares of the parties must be

determined as on the date when the partition is reopened. Normally, if there has been no death or birth in the family subsequent to the partition which is being reopened such reopening of partition may not adversely affect any of the parties, unless alienations have been effected by the separating members in the meanwhile. In the present case, however, Shrinivas has died before the date of the suit and consequently, the share of the plaintiff has increased from $\frac{1}{3}$ to $\frac{1}{2}$, just as the share of Ramachandra has similarly increased. We are free to confess that we find it somewhat difficult to decide what would be the status of Ramachandra qua Shrinivas and his joint family in consequence of the partition effected by them both in December 1932. But we do not feel any such difficulty in determining the status of Shrinivas himself. If we treat the plaintiff's case, as we must, as that of a son who was in the womb of Sundrabai at the time of the partition, we must hold that he and Shrinivas remained undivided despite the partition between Shrinivas and Ramachandra. It is impossible to conceive that a son who whilst in his mother's womb was a member of an undivided family was born in a family which was divided even quae his grandfather. By his adoption the plaintiff claims to enter the undivided family of his adoptive father.

'In the present case the plaintiff is the grandson of Shrinivas and whatever may be the legal relationship between Shrinivas and Ramachandra, we feel no doubt that between Shrinivas and the plaintiff a coparcenary must be presumed to exist. If this be the true position, then it may perhaps be that Ramachandra would be entitled only to $\frac{1}{3}$ rd share in the property and the remaining $\frac{2}{3}$ rd would vest in the coparcenary consisting of Shrinivas and the plaintiff. In that case on the death of Shrinivas the plaintiff may be entitled to the whole of this two-thirds share by survivorship.....' From the facts and discussion above set out it will be seen that the plaintiff in that case could not have been given a share in the property without reopening the partition effected. In that case the partition was between the father and his son. The plaintiff was the adopted son of one of the deceased sons. The adopted son did not belong to one of the sub-branches in the family as in the present case.

He represented one of the main branches. Hence he could not be given his share without reopening the partition, whereas in the instant case, the plaintiff on

adoption became a member of the branch of the first defendant and he could only look to the branch family property for his share. None of the legal fictions referred to by the learned Judge would be of any avail in the present case. Let us assume that the plaintiff by a fiction of law became the posthumous son of Naranappa.

Even then the 1st defendant could have represented him and agreed for the partition. Equally the decision in AIR 1954 Bom 318 does not directly touch the point at issue. In that case the plaintiff who was adopted by the widow of a deceased brother of the defendants filed a suit against the defendants for partition and possession of his 1/5th share in the family property and a 1/5th share IP certain subsequently acquired property.

He had been adopted subsequent to the partition in the family and also subsequent to the acquisitions in question. These acquisitions were proved to have been made with the aid of the income of the property allotted to the sharers. There were also some alienations after partition and before the plaintiff's adoption. It was contended that the right of the plaintiff was to take his share in the properties which were in existence at the time of the partition, but exclusive of the property which had been alienated,

His claim to share in the subsequently acquired properties was also resisted. But the Court held that the plaintiff was entitled to 1/5th share not only in the family property as it existed at the time of the partition but also in the subsequent acquisitions made by the defendants. It was further held that the alienations made without necessity did not affect his rights.

This conclusion naturally followed from the legal fiction that the adoption dated back to the date of the death of adoptive father and the adopted son was deemed to have entered into the undivided family of his adoptive father. In that case also the plaintiff constituted one of the main branches in the family and no partition could have been effected without his concurrence. We were then referred to the Full Bench decision in *Krishtappa Venkappa v. Gopal Shivaji Ramchandra* : AIR1957 Bom214 . This decision has no direct bearing on the point under consideration. The rights of the adopted son have been liberally extended by numerous decisions of Courts. As remarked by Gajendragadkar J. these

extensions were made by employing a large number of legal fictions. We would hesitate to make any further extension unless clearly required by any principle of law.

We are unable to agree with the plaintiff that he is entitled to go behind the partition effected in 1936 and claim his share as if he continued till the institution of the present suit, to be an undivided member of the family as it stood prior to 1936.

12. The learned counsel for the appellants has contended that the plaintiff's right to reopen the partition has been barred by limitation on the ground that the first defendant who could have given a valid discharge on behalf of the plaintiff was a party to the partition and the same has not been challenged within the period of limitation. In view of our earlier findings, it is unnecessary to examine the correctness of this contention.

13. It follows from what we have said before that the plaintiff can only take his share from the properties allotted to the branch of the first defendant. The branch of his adoptive father was entitled to a half share in those properties. Out of that his adoptive mother, i.e., 20th defendant is entitled to an one-third share. Consequently, the plaintiff will be entitled to 2/6th share and the 20th defendant to 1/6th share in the properties allotted to the share of the first defendant.

But according to the learned Counsel for the first defendant the plaintiff and the 20th defendant are only entitled to shares in the branch family properties minus the share of Devamma the deceased mother of the first defendant. Devamma was alive on the date of partition in 1936 but died before the present suit was instituted. It is urged on behalf of the 1st defendant that Devamma should be deemed to have been divided from the branch family of the first defendant on the date of the partition itself.

This contention is purported to be founded on Section 8(1)(c) of the Mysore Hindu Law Women's Rights Act. It is further urged that after Devamma's death her share of the property must be deemed to have devolved on the first defendant as her heir, thus leaving the plaintiff and the 20th defendant each with only a half share in the property remaining after setting apart Devamma's share. It will be noticed that

in fact no share had been allotted to Devamma at the time of the partition. She lived and died joint with the other members of her branch.

As stated before, the partition in question mainly effected a division between the three main branches. But the counsel for the first defendant contends that this is an immaterial circumstance as she must be deemed to have been divided though in fact she might not have been divided, and that, according to him is the effect of section 8(1)(c) of the Hindu Law Women's Rights Act. To test the validity of this contention, it is necessary to set out the relevant portions of Section 8-

'8(1)(a) At A partition of joint family property between a person and his son or sons, his mother, his unmarried daughters and the widows and unmarried daughters of his predeceased undivided sons and brothers who have left no male issue 'shall be entitled to share' with them.

'8(1)(b). At a partition of joint family property among brothers, their mother, their unmarried sisters and the widows and unmarried daughters of their predeceased undivided brothers who have left no male issue, 'shall be entitled to share' with them .

'S(1)(c). Sub-sections (a) and (b) shall also apply mutatis mutandis to a partition among other coparcener in a joint family....' (Underlining there into ') is ours).

There is nothing in these sub-sections from which it could be reasonably construed that the female relatives mentioned therein become divided automatically if and when a partition takes place either under Section 8(1)(a) or 8(1)(b) or 8 (1) (c). All that these sub-sections lay down is that they are entitled to a share whenever a partition as contemplated in those sub-sections takes place. It is one thing to be entitled to a share and quite a different thing to get oneself divided.

In a Mitthakshara joint Hindu family the wife is a member of the joint family of her husband, After the death of her husband she continues to be a member of the joint family of her sons if they are undivided. She goes along either with her husband or along with her sons as the case may be. Prior to the Hindu Law Women's Rights

Act referred to hereinbefore she was not a sharer though a member of the joint family. The Hindu Law Women's Rights Act is an amending Act.

Hence the personal law continues to be in force excepting to the extent it is modified by the amending Act. Any change in the Law will not be readily inferred. The language of the statute should bear out the change contended for or at any rate it should flow by necessary implication from the wording of the relevant provision. If the intention of the legislature was as contended for on behalf of the appellants, then more appropriate language would have been used to bring about the change.

We have not been shown any legislative policy, necessitating the separation of the female member from their families. We ought to refrain from such a construction unless we are compelled to do so by the language of the section. It is true that the language employed in Section 8(1)(c) is not free from difficulties. But that sub-section for our purpose is controlled by Sub-sections 8(1)(a) and 8(1) (b).

In both these sub-sections the female relatives mentioned therein are only given a right to get a share. To use the language of the section, they are 'entitled to a share'. In other words, they have a title to a share which is different from their being given a share. It is for them to enforce their right or remain joint. This is also made clear by a reference to Section 8(5) In the instant case Devamma did not claim or obtain her share.

Consequently she remained joint with her son and grandson and the property including her share continued to be the joint family property. On her demise the share of the coparcener was increased. The decisions in Venkatapathiah v. Saraswathamma, 16 Mys LT 273; K. Nagendrasa v. K. Ramakrishnasa. 19 Mys LJ 277 and Krishna Rao v. Nagu Bai, 50 Mys HCR 171 were cited to us on behalf of the appellants.

But they are not of any assistance in deciding the point in dispute. The decision in Chikkakempe Gowda v. Marlaiya, 53 Mys HCR 278: 29 Mys LJ 64 has also been referred to. That is a decision rendered under Section 8(1)(d) of the Hindu Law Women's Rights Act. It was held therein that the vested interest of a female

member in respect of her share accruing under that provision is a heritable interest. It is not necessary to consider this decision as the language employed in Sub-section 8(1)(d) materially differs from the language in Sub-sections 8(1)(a), 8(1)(b) and 8(1)(c).

14. In view of our finding that the plaintiff and defendant 20 are entitled to share only in the properties allotted to the first defendant's branch, it is unnecessary to consider whether the property shown in plaint item No. 5 is a joint family property or not. It was not an item of property allotted to the share of the first defendant in the partition of 1936. Even otherwise, it is- difficult to justify the finding of the Court below that this item of property belongs to the joint family.

It was acquired by M. C. Govindappa who was a junior member in the family. It is nobody's case that he had any hand in the management of the family affairs or that any family income went into his hands. Admittedly he was a mechanic in the Mysore Sandal Oil Factory getting about Rs. 100/-per month. This property had been mortgaged to him by one Bapu Bomaswamiah as per Ex. XVI on 16-5-1926 for a sum of Rs. 1,000/-.

It was later sold to him as per Ex. X dated 13-3-1927 for a sum of Rs. 4,500/-. Exhibit XVIII is the Patta Book. It shows that the patta of the property stood in the name of M. C. Govindappa. Kandayam receipts are marked as Ex. XIX. The only ground on which the trial Court held that this was a joint family property is that Govindappa who was living in the family house did not contribute, any sums towards the expenditure of the family house. This is a wholly irrelevant consideration. We are clearly of the opinion that this item of property has not been proved to be a joint family asset.

15. Now proceeding to the memorandum of cross-objections, in view of our earlier findings, it is unnecessary to decide the true character of the property shown in plaint item No. 30. This is not an item of property allotted to the share of the first defendant. Nor are we satisfied that this item has been proved to be a joint family asset. It relates to two houses bearing Nos. 880 and 881 in Chamudi Extension at Mysore. Exhibit IX and XXV are the sale deeds in respect of this item.

They are dated 22-9-1926 and 24-12-26 respectively. The total consideration paid for this item is Rs. 500/-. Govindappa had mortgaged them in favour of the Government for House Building Advance. All along he was treating this as his self-acquired property. As referred to earlier, he was only a junior member in the family and he had his own private source of income. Hence we see no reason ' to differ from the conclusion of the trial Court on this point.

16. The Court below has awarded profits to the plaintiff from the date of the suit. The plaintiff complains that past profits as claimed in the plaint should have been granted to him. Prior to the suit the plaintiff had not claimed separation from his uncle. Ordinarily a coparcener is entitled to claim profits only after there is a division of status, or when he has been kept out of the family property. The plaintiff has not put forward any such Case.

His, only grievance appears to be that he did not share in the family income ever since his adoption as he was living with his natural father and brothers. This is not a sufficient ground in law to allow him past profits. It is not his case that he was not permitted to live with his adoptive father's family. The fact that the first defendant is resisting his claim in the present suit by itself is irrelevant in deciding the question of profits. On this point we agree with the trial Court.

17. The proper order as to costs in the trial Court will be considered when we decide the question of costs in this appeal.

18. In the result, the appeal is allowed to the extent hereinbefore indicated and the decree of the trial Court will be accordingly modified, i.e., there will Be a decree in favour of the plaintiff granting him 2/6th share in the property allotted to the branch family of the first defendant as per the partition of 1936. The suit in respect of the properties allotted to the other branches is dismissed. . Further the plaintiff is entitled, to get profits from the first defendant from the date of the suit till the delivery of his share of the property. The quantum of profits will be ascertained in the final decree proceedings.

19. As, regards costs we see no reason to interfere with the discretion exercised by the lower court. Consequently all parties will bear their own costs in the trial

Court. In this Court the plaintiff (first respondent) will pay the costs of appellants 2 to 11 Advocate's fee Rs. 250/- (two hundred and fifty) (one set). The first appellant and the respondents will bear their own costs.

Nittor Sheenivasa Rau, J.

20. I agree.

21. Order accordingly.

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