1964

March 26

K. V. NARAYANASWAMI IYER

v.

K. V. RAMAKRISHNA IYER AND ORS.

[K. SUBBA RAO, K. C. DAS GUPTA AND RAGHUBAR DAYAL, JJ.]

Hindu Law—Property acquired in the name of a member of joint family—Joint family having sufficient nucleus on that date—Presumption that property is acquired from joint family funds—If rebuttable—Past transactions—Manager when accountable.

There were three brothers who continued as members of a joint family with the eldest of them, the first respondent as the karta. Certain properties were acquired thereafter for the joint family. Certain properties were also acquired in the name of the first respondent's son his wife and grandson. The two other brothers of respondent no. 1 acquired properties for themselves out of their own earnings. Relations became strained between the brothers and the second brother the present appellant filed suit for partition claiming not only the original properties of the joint family and the properties acquired for the joint family by the Karta, the present respondent but also the properties acquired by the respondent no. 1 in the name of his wife, son and grandson as joint family properties. He also called on the first respondent to account for the past years. The third brother was impleaded as second defendant. Respondent no. 1's contention was that the last mentioned properties were bought by him from his own savings and therefore were not part of the joint family property and consequently not liable to partition. The learned trial Judge held that those properties were joint family property and were liable to be partitioned. Respondent No. 1 thereupon appealed to the High Court and the High Court allowed the appeal regarding substantial part of the schedule properties. Thereupon the appellant filed the present appeal.

Held: (i) Where properties were acquired in the name of a joint family member, if at the date of such acquisition the joint family had sufficient nucleus for acquiring it, the property should be presumed to have been acquired from out of family funds and so to form part of the joint family property, unless the contrary is shown. In the present case on a consideration of the evidence it is found that the joint family had at the date of the acquisition of the properties in question sufficient nucleus from which these properties could be acquired.

Amritlal Sen & Ors. v. *Surath Lal Sen*, A.I.R. 1942 Cal. 553 and *Appalaswami* v. *Suryanarayanamurthy*, I.L.R. [1948] Mad. (P.C.) 440, referred to.

(ii) In the absence of any evidence of fraud or misrepresentation the Karta of a joint family cannot be called upon to account for the past transactions, but this does not mean that the parties were bound to accept the statement of the Karta as to what the property consisted of and an enquiry should be directed by the court in a manner usually adopted to discover that in fact the property consisted of at the date of the partition. In what manner this principle can be applied depends on the facts and circumstances of each case. Where as in the present case the evidence on record shows prima facie that the Karta could not reasonably

be expected to have in his hands at the date of the suit any accumulaties found on evidence to have been acquired by the family, there can be no justification for calling the Karta to account for his past dealing with the joint family property and its income.

Parameshwar Dube v. *Govind Dube*, I.L.R., 53 Cal. 459, explained.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 589 of 1960. Appeal by special leave from the judgment and decree dated April 28, 1953, of the Madras High Court in A.S. No. 695 of 1949.

K.N. Rajagopal Sastri, K. Jayram and *R. Ganapthy Iyer*, for the appellant.

A.V. Viswanatha Sastri and *T.V.R. Tatachari*, for respondent nos. 1, 3, 4 and 6 to 8.

B. Kalyana Sundaram, M. Rajagopalan, K. Rajendra Choudhry, M. R. Krishna Pillai for *K. R. Chaudhuri*, for respondent no. 2.

March 26, 1964. The Judgment of the Court was delivered by

Das Gupta, J.

DAS GUPTA, J.—Three brothers, Ramakrishna, Narayanaswamy and Mahadeva, who are eighty-three, seventy nine and sixty nine years of age respectively, are the main figures in this litigation. After their father's death in 1908 the three brothers continued as members of a joint family. The eldest brother, Ramakrishna became under the law the Karta of the family. When the father died the family was possessed of about 10 acres of land. But he had left some debts and one of the first acts which Ramakrishna had to do as the Manager was the repayment of those debts. Ramakrishna had become the Karnam in Narasingampettai in 1902 and even during his father's life time started acquiring property. Property to the extent of about 25 acres was acquired for the joint family between the years 1911 to 1931. In 1927 Ramakrishna had been transferred to the bigger village of Vepatthur and continued to be there till 1930. On his retirement in that year his son Venkatarama succeeded him as the Karnam of Vepatthur. Between 1931 to 1946 properties in Vepatthur and other villages were acquired in the name of Ramakrishna's son Vankatarama, his wife Mangalathammal, his grandson (Venkatarama's son) Mahalingam. Some property was acquired also in the name of Mangalathammal's brother Raja Ayyar. Monies were also invested in loans in the names of Ramakrishna's wife, Mangalathammal, his son Venkatarama and his grandson, Mahalingam.

1964

K.V. Narayanaswami Iyer
v.
K.V. Ramakrishna Iyer and Others

Das Gupta, J.

The second brother Narayanaswami became a Vakil's clerk in Kumbakonam in 1910. The third brother Mahadeva who was a boy of thirteen at the time of his father's death was put into the medical school and qualified as a doctor. He was in service as a Sub-Assistant Surgeon at the time when the present suit was instituted by Narayanaswamy. Both of them earned well and have admittedly acquired properties for themselves out of their own earnings.

As early as the thirties feelings became strained between Ramakrishna, the eldest brother and Narayanaswami the second brother. Mahadeva who had to remain away at different places in connection with his service demanded partition of the joint family properties and in this Narayanaswami also seems to have joined him. The extreme action of going to courts was however not taken so long as mother was alive. She died early in 1945 at the age of 90 years. In December, (12th December) 1946 Narayanaswami sent a lawyer's notice to Ramakrishna in which he claimed that not only the 25 acres acquired between 1911 and 1931 but also the properties acquired in the name of Ramakrishna's wife, his son and brother-in-law had been acquired with the income of the family and formed part of the joint family properties. He claimed also in this notice that family funds of about Rs. 25,000/- was in the hands of Ramakrishna in the shape of cash and Benami investments. He demanded a partition of all these properties and of the cattle and other movable properties owned by the family. He also called upon Ramakrishna to account for the income derived from the family properties "for the last three years at least". In all these he claimed a one-third share.

To this Ramakrishna replied on December 31, 1946. He stated that the joint family properties consisted only of 10 acres left by their father and about 25 acres acquired later on and denied that the other properties belonged to the family. Soon after this, on the 1st February 1947. Narayanaswami brought this suit for partition and accounts in the court of the Subordinate Judge, Kumbakonam. The eldest brother Ramakrishna was impleaded as the first defendant; Mahadeva the third brother, was the second defendant, Ramakrishna's son Venkatarama, his wife Mangalathammal and his brother-in-law Raja Iyer were impleaded as the third, fourth and the fifth defendants respectively. Mahalingam was impleaded as the sixth defendant. Two other minor sons of Venkatarama were also impleaded. They are the seventh and the eighth defendants in the case.

The plaintiff's case was short and simple. He claimed that Ramakrishna as the Karta of the joint family managed the family properties and acquired properties with the family funds from 1911 to 1946. He thus claimed that not only the 34

acres and 58 cents of land in the village Kumarakshi (mentioned in the A Schedule) which the first defendant Ramakrishna's wife or son or grandson or brother-in-law were joint ties mentioned in the Schedules B, B1 and B2, and C, C1 and C2 and D for which the sale deeds stood in the name of Ramakrishna's wife or son or grandson or brother-in-law were joint family properties. He claimed also that between 1931 and 1946 Ramakrishna, the Karta, had invested family funds in the name of his wife, his son and his grandson and these were also joint family properties. The movable properties claimed to be joint family properties were mentioned in Schedule A2, while the house in Thiagarajapuram, also claimed to be joint family property was mentioned in A1 Schedule. The plaintiff prayed for allotment to him of one third share of these properties by division in metes and bounds into three equal shares. He further prayed for a direction on the first defendant to account for the management of the family properties for three years and for payment to the plaintiff of his share in the amount that may be found due.

The second defendant Mahadeva generally supported the plaintiff though as regards the years, 1940, 1941, 1942 and 1943 his case in the written statement was that it was the plaintiff Narayanaswamy and not the first defendant who collected the income from the joint family properties. For these four years, he pleaded that the plaintiff was liable to render an account while for the remaining period the first defendant was said to be liable. In a Schedule to his written statement he mentioned several other items of properties which he claimed belonged to the joint family though one of the sale deeds stood in the name of the sixth defendant Mahalingam and the other in the name of the fifth defendant Raja Ayyar. The other defendants contested the suit.

The first defendant's case was that though on his father's death he became in law the Karta of the joint Hindu family the actual management was carried on by the mother till 1940 and from 1940 till the mother's death in 1945 by the plaintiff Narayanaswami. It was only after the mother's death that he has taken up the management of the properties. He pleaded that of the properties mentioned in the plaint only 34.58 acres mentioned in the A Schedule formed the joint family property. (In addition to some of the movable properties mentioned in A2 Schedule). He further pleaded that a house in Kumbakonam town which was acquired by the plaintiff in his own name as also some lands in Manalur village in Kumbakonam and Rs. 8,000/- in cash which the plaintiff had obtained on sale of certain lands also formed part of the joint family property.

His wife Mangalathammal, the fourth defendant also pleaded that the properties and the investments standing in her

1964

K.V. Narayanaswami Iyer v. K.V. Ramakrishna Iyer and Others

Dass Gupta, J.

name were made by her on her own account with the monies which her husband Ramakrishna gave to her from his own earnings. These therefore were not part of the joint family property and consequently not liable to partition.

The third defendant (Venkatarama's) case was that the purchases of land and investments of money standing in his name were all with his own earnings since he became Qarnam and did not form part of the joint family property. As regards what stood in the name of his son Mahalingam the third defendant pleaded that these were with his own earnings. The fifth defendant also pleaded that whatever stood in his name was acquired by him with his own money and did not form part of the joint family of the plaintiff and his brothers.

The learned Subordinate Judge held on a consideration of the evidence that the plaintiff's case that the eldest brother Ramakrishna managed the family property as the Karta from and after their father's death in 1908 till the date of the suit had been established. He also came to the conclusion that in about 1931 Ramakrishna had with him an accumulated income of about Rs. 14,000/- belonging to the family and but very little money of his own. From these findings it was an easy step to hold, as the learned Judge did, that the immovable properties mentioned in Schedules A, A1, B, B1, C. C1, C2 and D as also Item 5 in Schedule B2 were all properties belonging to the joint family. Out of these he found that the properties in Schedule A1, that is, a house in Thiagarajapuram had been given away to the sister Rukmaniammal and was no longer a joint family property and therefore not liable to division. The rest of the properties, he held, was liable to be divided among the three brothers, the plaintiff and the defendants 1 and 2. The Court also held that the mortgages and promissory notes on which money had been lent in the names of defendants 3 to 5 belonged to the joint family with the exception of a few standing in the name of the third defendant (Venkatarama) which was held to be the third defendant's personal property. A preliminary decree was made by the Court in accordance with these findings with a direction that an account be taken with reference to income of the properties in Schedules A, A1, B, B1, C, C1 and D and Item 5 in Sch. B2 and the house at Kumbakonam mentioned in the Schedule to the first defendant's written statement, for three years prior to the date of the suit and from the date of the suit till the passing of the final decree. As regards the properties in Schedule A it was directed that the accounting will cease from the date on which the parties took possession of their share in accordance with the interim decree.

Against this decision the first defendant appealed to the High Court of Judicature at Madras. The plaintiff also filed

an appeal challenging the decision of the Subordinate Judge that the house in Kumbakonam was a joint family property. The High Court allowed the plaintiff's appeal holding that the Kumbakonam house was a separate self acquisition of the plaintiff. Against this decision of the High Court no appeal has been preferred and we are no longer concerned with the question whether this house was plaintiff's property or not.

In the appeal preferred by the first defendant the High Court came to the conclusion, disagreeing with the Trial Court, that the first defendant Ramakrishna had saved enough from his separate earnings from which it was quite possible for him to make all the acquisitions and investments in the name of his son, wife and grandson subsequent to 1930. In the opinion of the High Court the view of the Subordinate Judge that by 1930 the first defendant had in his hands a sum of Rs. 14,000/- accumulated from the income of the joint family lands was "surprising and untenable". It did not disturb the Trial Court's findings that Schedule D land acquired in the name of the 3rd defendant was joint family property, apparently because no appeal had been filed as regards this property. Taking these 14 acres to be acquisitions for the family the High Court recorded its conclusion thus:—

> "When we consider that the joint family nucleus has been more than quadrupled, it is difficult to see what grievance the younger coparceners really have, particularly the second defendant, who after keeping for himself his earnings as a Doctor in Government Service finds himself entitled to a share in a greatly increased ancestral patrimony."

Finally the High Court concluded "that the plaintiff has not shown that any of the acquisitions or investments in the names of defendants 3, 4 and 6 were made from joint family funds." Accordingly, it allowed also the appeal preferred by the first defendant, holding that the only items liable for partition as joint property assets were those in Schedules A and D. It also ordered that the first defendant would account for the income from 12th December 1946, the date on which notice demanding partition was sent to him by the plaintiff. The present appeal has been preferred by the plaintiff against this decision of the High Court.

Two main arguments were advanced before us by Mr. Rajagopala Sastri in support of the appeal. The first is as regards the properties purchased in the name of the first defendant's wife, his son, and his grandson. Learned Counsel submitted that the High Court did not record any clear conclusion that at the date of the acquisition of these properties the joint family had not a sufficient nucleus for acquiring these.

1964

K.V. Narayanaswami Iyer v. K.V. Ramakrishna Iyer and Others

Das Gupta, J.

He argued that the acquisitions in the name of the first defendant's wife was admittedly with funds advanced by the first defendant himself; and if at the date of the acquisition in her name the joint family had sufficient nucleus for acquiring them, the presumption would be that they were acquired with joint family funds notwithstanding the fact that the first defendant may have sufficient funds of his own for the same purpose. It was rightly argued that in such a case the property should be held to be joint family property unless the presumption of the acquired property also being joint family property was re-butted by the first defendant. It was also argued that acquisitions in the name of the third defendant and the sixth defendant should also be held to have been made with funds advanced by the first defendant himself and so these also should be presumed to have been acquired with joint family funds if it is shown that the joint family had sufficient nucleus for acquiring these at the date of the acquisitions and the first defendant does not show positively that the funds with which they were acquired did not belong to the joint family.

The legal position is well settled that if in fact at the date of acquisition of a particular property the joint family had sufficient nucleus for acquiring it, the property in the name of any member of the joint family should be presumed to be acquired from out of family funds and so to form part of the joint family property, unless the contrary is shown. (Vide *Amritlal Sen & ors.*, v. *Surath Lal Sen & others*(1) *Appalaswami* v. *Suryanarayanamurthy & others*(2).

In the case before us, it is not disputed that the acquisitions in the name of the first defendant's wife were made with funds advanced by him. As regards the acquisitions in the name of the third defendant and his minor son the sixth defendant also we find it reasonable to hold from the evidence, as regards the earnings of the third defendant and other circumstances, that for these acquisitions also money was paid by the first defendant. The question whether the joint family had at the time of each of these acquisitions sufficient nucleus from which the acquisitions could have been made is therefore of great importance.

On a consideration of the evidence, as discussed below, we have come to the conclusion that it does not appear that the joint family had at the date of the acquisitions made in the names of the first defendant's wife, his son, and his grandson sufficient nucleus from which these properties could be acquired. In coming to this conclusion we have taken into consideration the fact that family funds were spent in purchasing 14 acres of land mentioned in the name of the 5th defendant.

(1) A.I.R. 1942 Cal. 553.

(2) I.L.R. [1948] Mad. (P.C.) 440.

The period during which acquisitions admittedly for the joint family were made came to an end in about 1931. At that time the first defendant had, according to his own evidence, about Rs. 15,000/- in his hand. His case is that this entire amount was what he had accumulated out of his own earnings. The Subordinate Judge held that a little more than Rs. 14,000/- out of this amount was the savings from the family funds. We agree with the High Court that this conclusion is not justified by the evidence on the record. As rightly pointed out by the High Court properties worth about Rs. 20,000/- had been purchased out of the family income during this period. During part of this period at least monies had to be spent for other requirements of the family including the expenses on the education of the third brother Mahadeva. The several documents produced in the case show that at the time of more than one purchase the first defendant had to borrow money on promissory notes to pay the consideration mentioned in the documents. It is worth mentioning that even the plaintiff was not prepared to say that the family income was sufficient to pay for these purchases. In cross-examination a question was put to him in these words:—

> "Q. From 1911 out of the family income Rs. 20,000/- worth of lands had been purchased? Can there have been more income from the family lands?"

The answer is significant. It was in these words:—

> "A. From the family income, the joint income of myself and Defendant 1 certainly exceeded Rs. 20,000/-. The income of myself and Defendant 1 which went in the purchase of lands may have come to Rs. 10,000/-".

In other words, the plaintiff himself seem to concede that only Rs. 10,000/- of the family income was available during this period for purchase of lands. The claim made here that he also contributed to the purchase is clearly inconsistent with his own written statement and with other parts of his evidence and cannot be accepted.

The learned Subordinate Judge appears to have been convinced that Ramakrishna's personal earnings were very little. He thought also that what little Ramakrishna earned was required for the expenses of his own branch of the family. The learned Judge concluded that he could not have saved out of these earnings. This view appears to have been mainly responsible for this conclusion that almost the whole of Rs. 15,000/- which the defendant No. 1 admitted to have with him in about 1931 came out of the family funds. In our opinion, the materials on the record do not justify the Trial Court's view that Ramakrishna could not have accumulated a sum of

1964

K.V. Narayanaswami Iyer v. K.V. Ramakrishna Iyer and Others

Das Gupta, J.

Rs. 15,000/- out of his own income. The mamools which he received as Karnam of Narasingampettai and later on of the bigger village Vepatthur amounted to a considerable quantity of paddy and must have fetched him a goodly income. There was apart from this, his income from the banana plantations which he had at Narasingampettai. One of the lease deeds shows a receipt of Rs. 450/- for one season. Taking good years with bad, it would not be unreasonable to think that this also brought him a few thousands of rupees. We are convinced also on a consideration of his evidence, taken with the entries in the account book of Appaswamy Iyer (Ex. B 101) that he received a sum of Rs. 2,500/- as reward for successfully maintaining the litigation on Appalaswamy's behalf. There can be little doubt that he received a good sum also as fees for writing documents. One of his witnesses, Narayanaswami Reddiar, DW 7, has given evidence that he paid the defendant Rs. 1,000/- as fees for the documents written for him. Even if this be considered an exaggeration, it is quite clear from the evidence of this witness that Ramakrishna who, it may be noted, was a man of some education, did a flourishing side business as a writer of documents, saved two or three thousand rupees, earned by him by this work during the entire period he served as a Karnam. It is more than probable that he had other sources of income which he did not think it prudent to mention in the witness box.

On a consideration of the circumstances we are convinced that this story that he had Rs. 15,000/- in his hands in about 1931 as accumulated out of his own earnings is substantially true.

Mr. Rajagopala Sastri has however rightly pointed out that a finding that in 1931 very little remained out of the family income would not be sufficient to show that there was no sufficient nucleus for the acquisition of the different properties in the name of the defendant's wife, his son and his grandson after 1931. For a proper decision of this question it is necessary to consider roughly the income and expenditure out of the admittedly family properties during this period.

We shall first consider the period, 1931 to 1939, as it is clear from the evidence that during this period the defendant No. 1 carried on the actual management of the joint family properties. It is common case of both the parties that the paddy yield in 1931 was 856 kalams; during 1932 1,000 kalams and during 1933 1,118 kalams. For the next five years paddy yield was, according to the respondent's counsel, 1,058, 1,058, 958, 958, and 958 kalams. The appellant's counsel puts his estimates and 1,160 kalams respectively. These differences in the estimates for these years at the higher figures of 1,360, 1,360, 1,160, 1,160 seem to be mainly due to the fact that while,

according to the respondent, the family was in possession of only six acres of mortgaged land in addition to the 35 acres, the appellant's case was that an additional area of six acres of mortgaged land was also in the family's possession during these years. Mr. Rajagopala Sastri was not however able to point out anything on the record in support of this claim. We think it reasonable therefore to accept as substantially correct the estimate of paddy yield as mentioned before us on behalf of the respondent for these years. For the year 1939 the yield may be taken as 1,153 kalams roughly as in that year the D Schedule lands now found to be the property of the joint family had also been acquired.

On an examination of the evidence on the record we accept the price for each kalam of paddy to be Rs. 2.50 nP for each of the years 1931 and 1932 and 1.19, 1.25, 1.37, 1.40, 1.50, 1.56 and 1.62 for the years 1933 to 1939 respectively, as contended before us on behalf of the respondent. The total income received from paddy in these nine years thus appears to be about Rs. 14,976/-. To this has to be added the receipts from the dry crops like black grams and green grams grown on some of the lands. We accept the evidence given by the defendant that dry crops were not grown in every year and also not on all the lands. The sale proceeds of black grams and green grams amounted to Rs. 72/- for the year 1935 according to the account book Ex. A 98. Taking this to be the average receipt per year from the dry crops the receipts from these crops during the nine years under consideration amounted to about Rs. 648/-. The total income from the crops grown on the joint family lands during the years 1931 to 1939 thus works out approximately to be about Rs. 15,624/-. Adding to this the sum of Rs. 1,100/- received on repayment of the mortgage loan on Ex. 187 the joint family earnings during these nine years appears to have amounted to about Rs. 16,724/-.

It is now necessary to have some idea of the expenditure incurred during these years. The claim of expenditure of Rs. 5,172/- during these years made before us on behalf of the respondent is not disputed by the appellant. We think also that the respondent's claim that Rs. 1,100/- advanced on the mortgage bond (Ex. 187) was paid from family funds should be accepted. We have next to add the sum of Rs. 6,500/- that was paid for the purchase of the D Schedule lands, Rs. 4,030/- paid as kists and Rs. 2,000/- as cultivation expenses including Kariasthan's pay. The total expenditure during the nine years—1931 to 1939—amounted thus to more than Rs. 18,000/-.

Proceeding therefore on the basis on which there is no longer any dispute, that the D Schedule lands were acquired out of the family funds, it appears clear that the joint family did not possess sufficient nucleus for making any of the other purchases

1964

K.V. Narayanaswami Iyer v. K.V. Ramakrishna Iyer and Others

Das Gupta, J.

made during this period, viz., the properties mentioned in Schedules B and B1 purchased by the document Ex. 125, the properties mentioned in Schedule C1 purchased by the document Ex. B 124, the properties mentioned in Schedule C purchased by Ex. 129, the properties mentioned in the Schedule to the written statement of the second defendant purchased by documents Exhibits B 134 and B 135. The High Court's conclusion as regards these properties that they did not form part of the joint family properties and are not liable to partition in the present suit is therefore clearly correct.

The properties mentioned in Schedule C2 were purchased on the 24th April 1941 by Ex. 136 in the name of the 4th defendant while properties mentioned in Item 1 of B2 Schedule were purchased on the 19th August 1942 by Ex. 126 in the name of the sixth defendant. Though it was the first defendant's case that he had nothing to do with these purchases we are convinced on a consideration of the evidence that the monies for these purchases were also advanced by him. To decide whether these properties or the properties mentioned in Item 5 of Schedule B2, a house in Vepatthur, of which mortgage was taken in the name of the first defendant himself by Ex. B 1929 on the 10th May 1942, formed part of the joint family property, it is necessary to examine what funds, if any, belonging to the joint family were with the first defendant during these years. The first defendant's case, as already indicated, is that from 1940 till the mother's death in 1945 the plaintiff and not he managed the joint family properties so that he did not receive any portion of the joint family earnings during the period. The plaintiff has strenuously denied the truth of this statement. There are several circumstances however which make us think that the first defendant's version is true. The most important of these is the fact that the youngest brother Mahadeva, who is clearly siding with the plaintiff in this family quarrel, made a definite assertion in his written statement in these words: "Similarly the plaintiff has been collecting the income from the joint family properties during the years 1940, 1941, 1942 and 1943." He also stated there that the plaintiff had assured him that he would maintain proper accounts for the collection and expenditure of the income joint family for his period of management and made the definite claim that the plaintiff was liable to render an account for the period of his management. It is true that at the trial Mahadeva tried to explain away this assertion in the written statement by saying that this was based on information given to him by the defendant No. 1. In the very next sentence, however, he again said that this view that the plaintiff was exclusively managing for certain years was his conclusion. It is important to notice in this connection that at the bottom of Ex. B 190 dated the 13th March 1941 which Mahadeva

received from Ramakrishna, Mahadeva made in his own hand an entry in red ink to the following effect:—

"1939—Kuruvai (paddy)—sold by Nana 1939—Semba Mudal (harvest)—by Nana, sold in 1940."

It is true that there are some letters which indicate that even during 1941 and thereafter Ramakrishna was issuing some instructions to the Kariasthan. But, considering the facts mentioned above along with the letters Exhibits B 177 and B 72 in which detailed instructions about the cultivation were being given by the plaintiff to the Kariasthan, we have come to the conclusion that from about 1940 till the mother's death early in 1945 the plaintiff displaced the first defendant from the management of the family lands and took away all the family lands in Kumarakshi and took away all the income from them.

The only income from joint family properties that appears to have come into the hands of the first defendant during this period was that from D Schedule lands. The yield from these lands may roughly be estimated at about 300 kalams for each year. The price per kalam in 1941 appears from Ex. 100 to have been Rs. 2/6/-. The net income, after payment of the kist and debiting the expenses of cultivation etc., may be placed therefore at about Rs. 500/-. It is undoubtedly a very rough estimate. But in the absence of anything more specific on the record we think it proper to accept this as a reasonable basis for ascertaining the nucleus available in the first defendant's hands from the D Schedule property. On this calculation the first defendant appears to have had in his hands about Rs. 1,500/- during the years 1940 to 1942. There was already however a deficit of more than this amount on his management of the properties during the previous period 1931 to 1939. It is reasonable therefore to think that there was no nucleus from the joint family properties which the first defendant could have possibly used in making the acquisitions during 1941 and 1942. The conclusion of the High Court that these properties did not belong to the joint family and are therefore not liable to partition cannot therefore be disturbed.

Some of the properties mentioned in Schedule B2 to the plaint were purchased in 1945 and 1946 by Ex. B 127 and B. 128 in the name of the third defendant, Venkatarama. At the time of these acquisitions the third defendant had been karnam of Vepatthur for over 15 years. It is not unlikely he would have saved some portion of his own earnings during this period so as to be able to pay for these purchases out of his own earnings. It cannot therefore be said reasonably that these purchases were made from funds advanced by the first defendant. Apart from this, it appears that the plaintiff has not been able to show that at the time of these acquisitions the first defendant had

1964

K.V. Narayanaswami Iyer
v.
K.V. Ramkrishna Iyer and Others

Das Gupta, J.

with him sufficient income out of the joint family properties for purchasing all these lands. We have already found that the first defendant resumed management of the joint family properties on his mother's death in 1945. On the question about the income and expenses during this period there is hardly any evidence worth the name on the record. On a consideration of all these circumstances, we are of opinion that the High Court's conclusion as regards these properties also that they did not form part of the joint family property is correct.

This brings us to Mr. Rajagopala Sastri's second argument. While admitting the legal position that in the absence of any evidence of fraud or misappropriation the Karta cannot be called upon to account for the past transactions, learned Counsel stresses the responsibility of the Karta to establish what are the assets available for partition. In support of this, the learned Counsel drew our attention to the decision in *Parmeshwar Dube* v. *Gobind Dube*(1). That case laid down the rule that in the absence of fraud or other improper conduct the only account the Karta of a joint family is liable for is to the existing state of the property divisible; but that this did not mean that the parties were bound to accept the statement of the Karta as to what the property consisted of and an enquiry should be directed by the court in a manner usually adopted to discover what in fact the property consisted of at the date of the partition. About the correctness of this proposition there is no dispute. In what manner this principle can be applied depends however on the facts and circumstances of each case. Where, as in the present case, the evidence already adduced before the court shows prima facie that the Karta could not reasonably be expected to have in his hands at the date of the suit any accumulation worth the name in addition to the immovable properties found on evidence to have been acquired for the family, there can be no justification for calling the Karta to account for his past dealings with the joint family property and its income. In the circumstances of this case therefore the order of the High Court that there was no liability on the first defendant as managing member to render any account of any kind prior to the 12th December 1946, on which notice demanding partition was issued, does not call for any modification.

In the result, the appeal is dismissed with costs.

Appeal dismissed.

(1) I.L.R. 53 Cal. 459.