S. SHANMUGAM PILLAI AND ORS.

v.

K. SHANMUGAM PILLAI AND ORS.

May 4, 1972

[K. S. HEGDE AND A. N. GROVER, JJ.]

Hindu Law—Widow's estate—Family arrangement—Alienation by widow—When reversioners precluded from challenging alienation—Charitable Trust—Tests for determining whether dedication complete or partial.

The last male-holder endowed some of his properties for a charity the management of which was hereditary. His widows alienated the properties inherited by them including the properties endowed. The appellants, as reversioners, filed a suit for setting aside the alienations and claiming the endowed properties as *'huqdars'*. The High Court dismissed the suit.

HELD, dismissing the appeal, that the appellants were precluded from questioning the alienations of the properties.

(i) Equitable principles such as estoppel, election and family settlement are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice and their scope should not be narrowed down.

An alienation by a Hindu widow is voidable and not void. A reversioner to the estate of a deceased separated Hindu, who has expressly assented to an alienation of property forming part of the estate, made by the widow in possession, cannot on succeeding to the estate after the widow's death repudiate his action and sue for possession of the property alienated by the widow. If the presumptive reversioner is a minor at the time he has taken a benefit under the transaction, the principle of estoppel will be controlled by another rule governing the law of minors. A minor cannot be compelled to take the benefit of a transaction which will have the effect of depriving him of his legal rights when the succession opens. But a minor can, after attaining majority, ratify the transaction entered into on his behalf by his guardian. If he so ratifies the transaction entered into by his guardian and accepts the benefit thereunder, there cannot be any difference in the application of the principle of election. If the original transaction conferring the benefit was in favour of the minor his enjoyment of the benefit after attaining the majority may in itself be a sufficient act of ratification. [578 D-G]

Krishna Beharilal v. *Gulab Chand*, [1971] 1 S.C.C. 837, *T. V. R. Subbu Chetty's Family Charities* v. *M. Raghava Mudaliar and Ors.*, [1961] 3 S.C.R. 624, *Fateh Singh* v. *Thakur Rukmini Pamanji Maharan*, I.L.R. XIV All. 339 *Jagarlpudi Seetharamayya* v. *Sarva Chandralya* [1954] 2 M.L. J. 162, *Makineni Viraiyya* v. *Madamanchi Sapayya*, [1964] 1 M.L.J. 276, and *Ramgouda Annagouda* v. *Bhausaheb*, 54 I.A. 396, referred to.

Further, if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time he cannot be permitted to go back on that agreement when reversion actually falls open. Although conflict of legal claims in present or in future is generally a condition for the validity of family arrangements it is not necessarily so. Even *bona fide* disputes, present or possible, which may not involve legal claims would be sufficient. Members of a Joint Hindu family may, to maintain peace

A or to bring about harmony in the family, enter into such a family arrangement. If such an agreement is entered into *bona fide* and the terms thereto are fair in the circumstances of a particular case, the courts would more readily give assent to such an agreement than to avoid it. [580 D, 581A]

Sahu Madho Das v. *Pandit Mukand Ram*, [1955] 2 S.C.R. 22, *Maturi Pullaiah* v. *Maturi Narasimhan*, A.I.R. 1966 S.C. 1836 and *Krishna Beharilal* v. *Gulab Chand*, [1971] 1 S.C.C. 837, referred to.

B (ii) A dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete a trust in favour of a charity is created. If the dedication is partial, a trust in favour of a charity is not created but a charge in favour of charity is attached to, and follows the property which retains its original private and secular character. Whether or not a dedication is complete would naturally be a question of fact to be determined in each case on the terms C of the relevant document if the dedication in question was made under a document. If the income of the property is substantially intended to be used for the purpose of a charity and only an insignificant and minor portion of the income is expected or required to be used and a substantial or the manager, it may be possible to take the view that dedication is complete. If on the other hand, for the maintenance of charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshipper for his own D private purposes, it would be difficult to accept the theory of complete dedication.

In the present case the appellants failed to establish that the dedication was complete. The dedication being only partial the properties retained the character of private properties and therefore the widows had a beneficial interest in those properties. [582 D-H]

E *Menakuru Dasaratharmai Reddi* v. *V. Duddukuru Subba Rao*, A.I.R. 1957 S.C. 797, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 693 of 1967.

Appeal from the judgment and decree dated November 10, 1966 of the Madras High Court in Appeals Nos. 245 and 530 F of 1961.

M. C.Chagla and *B. R. Agrawala*, for the appellant.

S. T. Desai, *K. R. Nagaraja*, *D. P. Mohanthy* and *S. Gopalakishnan*, for the respondents Nos. 1, 3 and 4.

The Judgment of the Court was delivered by

G **Hegde, J.**—This is a plaintiffs' appeal by certificate. The plaintiffs sued for possession of the properties described in Sch. I and IV of the plaint as reversioners of one V. Rm. Shanmugam Pillai who admittedly was the last male holder of those properties as well as several other properties. They also claimed past and future mesne profits in respect of those properties. Properties H detailed in Sch. I were said to have been endowed for a charity by name Annadhana Chatram Charity. The plaintiffs claimed possession of those properties as "Huqdars". They claimed possesion of Sch. IV properties as reversioners. The trial court

decreed the plaintiffs' claim in part. It gave a decree in favour of the plaintiffs in respect of plaint Sch. I properties but dismissed their claim regarding Plaint-Sch. IV properties. Both the parties appealed against the judgment and decree of the trial court. The High Court allowed the appeal of the defendants and dismissed that of the plaintiffs. In the result the entire suit was dismissed.

In order to examine the various contentions advanced at the hearing, it is necessary to state in brief various events that took place prior to the institution of the suit. One Ramalingam Pillai was the owner of a substantial part of the suit properties. He had a brother by name Kuppan Pillai. Ramalingam Pillai's wife pre-deceased him. He had no children. Ramalingam Pillai and Kuppan Pillai had married sisters. Ramalingam Pillai in 1898 but Kuppan Pillai had pre-deceased him. He had died in 1894, leaving behind him his two daughters Palani Achi Ammal and Pichai Ammal. Kuppan Pillai's wife had also pre-deceased Ramalingam Pillai. Ramalingam Pillai had brought up his brother's daughters Palani Achi Ammal and Pichai Ammal as his foster daughters. Before his death, Ramalingam Pillai had got married Palani Achi Ammal to V. Rm. Shanmugham Pillai, his maternal uncle's son by his first wife. The said Shanmugam Pillai was associated with Ramalingam Pillai in his business. On September 29, 1898 Ramalingam Pillai executed a settlement deed (Ex. A-2) settling his properties principally on Palani Achi Ammal, Pichai Ammal and Shanmugam Pillai. Under that deed, he gave some properties to his deceased wife's sister's son, Subramania Pillai. Subramania Pillai was the son of Chitravadavammal, sister of the wives of Ramalingam Pillai and Kuppan Pillai. Under Ex. A-2 Plaint-Sch. I properties except item No. 4, were set apart for charities which Ramalingam Pillai was carrying on. Under that document Shanmugam Pillai was declared "Huqdars" of the aforementioned Annadhana charity. The Huqdarship was to be hereditary in the family of Shanmugam Pillai. Ramalingam died very soon after executing Ex. A-2. After the death of Ramalingam Pillai, Shanmugam Pillai took as his second wife Pichai Ammal, the sister of his first wife Palani Achi Ammal. While managing the Annadhana Charities, Shanmugam Pillai acquired item No. 4 of Sch. I. and treated that property as that of the Charity. Shanmugam Pillai had no issues. He had executed a will on December 19, 1926. It was a registered will. That will be revoked on December 29, 1926. He died on December 31, 1926. After his death, his widows put forward another will said to have been executed by him on December 30, 1926 under which substantial bequests were made to Shanmugam Pillai known as Vendor Shanmugam Pillai, the step brother of V. Rm. Shanmugam Pillai as well as to his step sisters Irulammai and her husband Subramania Pillai.

A On September 29, 1898, the widows of V. Rm. Shanmugam Pillai and Vendor Shanmugar Pillai, his sister Irulammai and her husband Subramania Pillai entered into a registered agreement styled as "agreement of peaceful settlement". This document is marked as Ex. B-2. To that document Vendor Shanmugam Pillai's sons, the present plaintiffs 1 and 2 were also parties. At B that time, they were minors. They were represented by their father Vendor Shanmugam Pillai. Ex. A-2 primarily affirms the alleged will said to have been executed by V. Rm. Shanmugam Pillai on December 30, 1926. As per the agreement entered into under Ex. B-2, Vendor Shanmugam Pillai obtained possession of various items or properties left behind by V. Rm. Shanmugam C Pillai. In his turn he admitted that the widows of V. Rm. Shanmugam Pillai were the absolute owners of the properties said to have been bequeathed to them under the alleged will dated December 30, 1926. Ex. B-2 purports to be a family arrangement. In that deed Vendor Shanmugam Pillai acknowledged the right of the widows to manage the charities and pass on that right to others.

D Shortly after the execution of Ex. B-2, the senior widow Palani Achi Ammal filed a suit for partition of the properties mentioned in Ex. B-2. That suit was decreed. Thereafter on July 20, 1931, the senior widow settled the properties that she got as her share under the partition decree Ex. B-3 on Kanthimathimatha Pillai, his wife Pichai Ammal and their minor daughters as per the regis- E tered settlement deed Ex. B-3. This Pichai Ammal is the daughter of Subramania Pillai son of the original settlor's wife's sister Chitravadamal. The two widows Palani Achi Ammal and Pichai Ammal had brought up Pichai Ammal daughter of Subramania Pillai as their foster daughter and had got her married to the aforesaid Kanthimathinatha Pillai. The settlement proceeds on F the basis that Palani Achi Ammal is absolutely entitled to the properties settled. Thereafter the junior widow Pichal Ammal settled the properties that she got under the partition decree in favour of Palani Pillai, the 4th defendant in the suit, as per the registered settlement deed Ex. B-4 dated December 20, 1937. Palani Pillai is the son of Kanthimathinatha Pillai. He is referred G to in the setlement deed as the second son of the foster daughter of the widows, Pichal Ammal.

After the execution of Ex. B-2, Sankaralingam Pillai, brother of Vendor Shanmugam Pillai who was not a party to Ex. B-2 filed a suit for declaration that the alleged will dated December 30, 1926 is a forged document. The suit was decreed. The trial H court held the will put forward to be a forgery. Palani Achi Ammal and Pichai Ammal were defendants in that suit. The defendants appealed against the decision of the trial court. When

the matter was pending in appeal in the High Court Sankaralingam Pillai died. Thereafter the third plaintiff who was his adopted son was brought on record as the legal representative of Sankaralingam Pillai. He was represented by his guardian Meenakshi Ammal. That appeal was dismissed. The High Court came to the conclusion that on the evidence on record, it was not satisfied about the genuineness of the will. The present third plaintiff became major in 1938. Even after obtaining a decree in his favour in the will suit, the third plaintiff entered into an agreement with the two widows on October 27, 1938 (Ex. B-5). Under this deed he took substantial properties and acknowledged the absolute right of the widows as regards the other properties detailed therein. It may be noted that by the time Ex. B 5 came to be executed alienations in favour of Defendants 1 to 4 had already taken place. Under Ex. B-5, the third plaintiff also acknowledged the right of those defendants who were also parties to that deed, to the properties settled on them. Further under that document the third plaintiff acknowledged the right of the two widows and defendants 1 to 4 to manage the properties set apart for charities.

We have earlier mentioned that at the time Ex. B-2 was executed, plaintiffs 1 to 2 were minors. As seen earlier, the father of the plaintiffs had secured for himself and for his sons several items of properties under that agreement. The first plaintiff became major on January 10, 1931. Thereafter he, on his own behalf and as the guardian of his minor brother joined his aunt, Irulammal in partitioning the properties jointly obtained by them under Ex. B-2. Ex. B-10 dated October 11, 1931 is a settlement deed executed by the first plaintiff for himself and as the guardian of his brother, the second plaintiff settling some of the properties obtained under Ex. B-2 on their sister. The second plaintiff after becoming a major joined with the first plaintiff in conveying an item of property secured under Ex. B-2 in favour of one Subbiah Konar (Ex. B-11). Palintiffs 1 and 2 effected various alienations under Ex. B-12, B-15 and B-16 to B-42 of the properties obtained by them under Ex. B-2. All these transactions proceeded on the basis that the arrangement entered into under B-2 as was valid one. Those transactions show that plaintiffs 1 and 2 ratified the arrangement made under Ex. B-2. The third plaintiff in his turn alienated several items of the property obtained by him under Ex. B-5. On October 16, 1939, he sold some portions of that property under Ex. B-34 for Rs. 4,000/-. Again under Ex. B-36, he sold some other items on July 13, 1953 for a sum of Rs. 25,000/-. He also effected certain exchanges under Ex. B-34 and B-35. All these transactions proceeded on the basis that the arrangement made under Ex. B-5 was a valid

A one. Having set out the course of events, we shall now examine whether it is open to the plaintiffs to challenge the alienations effected in favour of D-1 to D-4.

We shall first take up the question whether the alienation of the Plaint-Sch. IV properties by Palani Achi Ammal and Pichai Ammal is open to challenge. There is now no dispute that these B two widows had only widows' estate in the properties left by their husband. The impugned alienations were not effected to meet any necessity of the estate of the deceased last male holder. Hence *prima facie,* the impugned alienations are not binding on the reversioners. But it is now well settled that an alienation by a Hindu widow is only voidable and not void. The reversioners C may or may not choose to avoid the same,—see *Ramgouda Annagouda and ors.* v. *Bhausaheb and ors.*(1) and *T. V. R. Subbu Chetty's Family Charities* v. *M. Raghava Mudaliar and ors*(2).

Both the trial court as well as the appellate court have come to the conclusion that the plaintiffs are not entitled to avoid the alienations in question either on the ground of estoppel or elec- D tion.

So far as the third plaintiff is concerned, he is clearly estopped from challenging those alienations made. As seen earlier even after the High Court came to the conclusion that the will put forward by the widows is not proved to be genuine, he entered E into an agreement with those widows under which he obtained some properties as absolute owner. In his turn he acknowledged the right of the widows to the remaining properties including those that had been alienated in favour of defendants 1 to 4. As seen earlier by the time Ex. B-5. came to be executed on October 27, 1938, the alienations in favour of defendants 1 to 4 had taken place. D-1 to D-4 were parties to Ex.-B-5. It is clear from Ex. B-5 F that the third plaintiff was aware of those alienations. In Ex. B-5, he accepted the validity of those alienations. In other words with full knowledge of facts the third plaintiff represented to the widows as well as to defendants 1 to 4—that he accepts the validity of the alienations in favour of defendants 1 to 4. By doing so he secured immediate advantage of getting possession of G fairly extensive properties which he would not have otherwise got till the death of the two widows. Hence he is clearly estopped from contesting the validity of the alienations in favour of defendants 1 to 4.

The claim of the third plaintiff may be examined from another angle. It is seen from the record that within about a month of H the decision of the High Court in the litigation relating to the will, the guardian of the third plaintiff entered into a compromise

(1) 54 I.A. 396. (2) [1961] 3 S.C.R. 624.

with the two widows possibly with a view to avoid further litigation. Evidently in pursuance of that agreement Ex. B-5 came to be executed after the third plaintiff became a major. Hence Ex. B-5 can be considered as a family settlement. That is not all. As seen earlier after he became a major, on the strength of Ex. B-5, he alienated several items of property obtained by him under that document. We shall presently examine the relevant decisions but at present it is sufficient to say that the third plaintiff is precluded from challenging the validity of the alienation made in favour of defendants 1 to 4.

Let us now examine whether plaintiffs 1 and 2 can challenge the alienations made in favour of defendants 1 to 4. The trial court has come to the conclusion that they are estopped from challenging the validity of the alienations in favour of defendants 1 to 4 in respect of the properties mentioned in Plaint-Sch. IV. The High Court has affirmed that decision on the ground that after they became majors they had elected to stand by Ex. B-2. Hence they cannot challenge the alienations in question. We have earlier seen that very soon after the death of V. Rm. Shanmugam Pillai, the father of the plaintiffs, Vendor Shanmugam Pillai on his own behalf and as the guardian of plaintiffs 1 and 2 entered into an agreement with the widows of V. Rm. Shanmugam Pillai (Ex. B-2). Under that agreement he secured immediate possession of considerable properties for himself and his minor sons, plaintiffs 1 and 2. Under Ex. B-2, Vendor Shanmugam Pillai by implication, admitted the genuineness of the alleged will of V. Rm. Shanmugam Pillai which was ultimately found to be not genuine by the High Court as seen earlier. But for the agreement under Ex. B-2 Vendor Shanmugam Pillai would not have got any portion of the properties left by V. Rm. Shanmugam Pillai during the life time of the widows of V. Rm. Shanmugam Pillai. It was said that at the time when Ex. B-2 was entered into V. Rm.Shanmugam Pillai might not have been aware of the fact that the will put forward by the widows was not a genuine one. Our attention was invited to the finding of the trial court that Ex. B-2, was a part of a scheme on the part of the widows of V. Rm. Shanmugam Pillai and Vendor Shanmugam Pillai to defeat the claims of Sankarlingam Pillai, the father of the third plaintiff. It is true that the plaintiffs who were minors on the date of Ex. B-2 would not have been bound by the agreement contained therein if they had not chosen to stand by it. It was open to them on attaining majority either to stand by the agreement or renounce the same. By the time they attained majority, the will case had been decided by the High Court. It is reasonable to assume that they were aware of the fact that the High Court had come to the conclusion that the will put forward was not genuine. Therefore

A it was open to them to denounce the agreement under Ex. B-2. But they did not choose to do so. On the other hand they not only continued to enjoy the properties that they and their father got under Ex. B-2 but also went on allienating various items of those properties, see Ex. B-9, B-10, B-11, B-12, B-15 and B-16 to B-42. From these transactions, it is clear that plaintiffs 1 and
B 2 ratified the agreement entered into under Ex. B-2. It is also reasonable to hold that after becoming majors instead of renouncing the benefit obtained under Ex. B-2, they elected to stand by that agreement and retained the benefit obtained under that document.

C Ex. B-2 and B-5 read together may also be considered as constituting a family arrangement. The plaintiffs and the widows of V. Rm. Shanmugam Pillai are near relations. There were several disputes between the parties. The parties must have thought it wise that instead of spending their money and energy in courts, to settle their disputes amicably. The father of plaintiffs 1 and 2 and later on the plaintiffs were only presumptive reversioners, so
D also was the third plaintiff. None of them had any vested right in the suit properties till the death of the widows. Hence first the father of plaintiffs 1 and 2 and later on the plaintiffs must have thought that a bird in hand is worth more than two in the bush. If in the interest of the family properties or family peace the close relations had settled their disputes amicably, this court will be
E reluctant to disturb the same. The courts generally lean in favour of family arrangements.

Equitable principles such as estoppel, election, family settlement etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In recent times in
F order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope.

Now let us proceed to consider the decided cases read to us at the hearing of the appeal.

G In *Fateh Singh* v. *Thakur Rukmini Ramanji Maharaj*(1), a Full Bench of the Allahabad High Court held that a reversioner to the estate of a deceased separated Hindu, who has expressly assented to an alienation of property forming part of the estate made by the widow in possession, cannot on succeeding to the
H estate after the widow's death repudiate his action and sue for possession of the property alienated by the widow. The ratio of that decision clearly applies to the claim made by the third plaintiff in this case.

(1) ILR XLV All 339.

In *Jagarlapudi Seetharamayya* v. *Sarva Chandrayya and ors.*,(1) Andhra Pradesh High Court was called upon to consider a claim somewhat similar to that made by plaintiffs 1 and 2. Therein the court ruled that during the life time of the widow a presumptive reversioner has only a spec successionis in the estate of the last male holder and he cannot, therefore, purport to convey the said interest or otherwise deal with it. His rights in the property would be crystallised only after succession opens. But after succession opens or even during the widow's life time he may elect to stand by the transaction entered into by the widow or otherwise ratify it, in which case he would be precluded from questioning the transaction. Proceeding further the court enumerated the three classes of estoppels that may arise for consideration in dealing with reversioner's challenge to a widow's alienation. They are: (1) that which is embodied in s. 115 of the Evidence Act, (2) election in the strict sense of the term whereby the person electing takes a benefit under the transaction and (3) ratification, *i.e.*, agreeing to abide by the transaction. A presumptive reversioner coming under any one of the aforesaid categories is precluded from questioning the transaction, when succession opens and when he becomes the actual reversioner. But if the presumptive reversioner is a minor at the time he has taken a benefit under the transaction, the principle of estoppel will be controlled by another rule governing the law of minors. A minor obviously cannot be compelled to take the benefit of a transaction which will have the effect of depriving him of his legal rights when the succession opens. But a minor can certainly after attaining majority ratify the transaction entered into on his behalf by his guardian. If he so ratifies the transaction entered into by his guardian and accepts the benefit thereunder, there cannot be any difference in the application of the principle of election. The effect would be the same. It is as if he was a major at the time the transaction was affected and the benefit was conferred on him. What he could not do at the time of the transaction must be deemed to have been done by him by his act of ratification. It may be that on attaining majority he has the option to disown the transaction and disgorge the benefit or to accept it and adopt it as his own. Whether after attaining majority the quandum minor accepted the benefit or disowned it, is a question to be decided on the facts of each case.

In the course of the judgment Subba Rao C.J. (as he then was) dealing with the case of persons who were minors at the time the transaction was entered into observed:

> "The mere act of succession to the father may not amount to ratification as the son's enjoyment is consistent

(1) [1954] 2, M.L.J. p. 162.

A with his right of inheritance to the father. But he can either expressly or by necessary implication ratify the transaction entered into by the father. But if the original transaction conferring the benefit was in favour of the minor, different considerations would arise. His enjoyment of the benefit after attaining majority may in
B itself be a sufficient act of ratification."

In support of the contention that the plaintiffs are not estopped which expression includes not only the estoppel proper but also "election" Mr. M. C. Chagla, learned Counsel for the appellants relied on the decision of a Division Bench of the Madras High Court in *Makineni Virayya and ors.* v. *Madamanchi Bapayya*(1). C On the facts of that case, the learned judge came to the conclusion that the plaintiffs-reversioners in that case were not estopped from claiming the suit property on the death of the widow. But in the course of his judgment, after examining several decisions Patanjali Sastri J. (as he then was) speaking for the Court observed :

D "These decisions will be found on examination to proceed on the principle that an allienation by a Hindu widow without justifying necessity is not void but only voidable at the instance of the reversionary heir who may either affirm or avoid it, but will be precluded from questioning it if he does something which amounts to an affirmation of the transaction. Such election to hold the
E sale good, as it has sometimes been expressed, may, it has been held, take place even before the death of the widow while the reversionary heir was only a presumptive reversioner."

In our opinion this decision instead of helping the plaintiffs
F definitely supports the contentions of the defendants.

It was urged on behalf of the plaintiffs that it was not permissible for the father of the plaintiffs 1 and 2 as well as the third plaintiff to transfer their contingent interest as remote reversioners; hence we must hold that the transactions entered into under Exs. B-2 to B-5 were wholly void. This contention can best be
G answered by quoting a passage from the decision of the Judicial Committee in *Ramgouda Annagouda's case*(2). Therein repelling a similar contention the Judicial Committee observed :

"It was argued that Annagouda's contingent interest as a remote reversioner could not be validly sold by him, as it was a mere spec succession is, and an agreement to
H sell such interest would also be void in law. It is not necessary to consider that question because he did not

(1) [1946] I, M.L.J. 276. (2) 54 I.A. 396.

> in fact either sell or agree to sell his reversionary interest. It is settled law that an alienation by a widow in excess of her powers is not altogether void but only voidable by the reversioners, who may either singly or as a body be precluded from exercising their right to avoid it either by express ratification or by acts which treat it as valid or binding."

It is true that a widow cannot enlarge her own estate by entering into a contract. But as observed by this Court in *Krishna Beharilal* v. *Gulab Chand*(1):

> "It is well settled that a Hindu widow cannot enlarge her estate by entering into a compromise with third parties to the prejudice of the ultimate reversioner. But the same will not be true if the compromise is entered into with persons who ultimately become the reversioners."

As observed by this Court in *T. V. R. Subbu Chetty's Family Charities' Case* (supra), that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open.

The application of the tests laid down in the above decisions leads to the firm conclusion that the plaintiffs are precluded from questioning the alienations of the various items of property covered by Sch. IV of the plaint.

Now turning to the plea of family arrangement, as observed by this Court in *Sahu Madho Das and ors.* v. *Pandit Mukand Ram and another*(2), the courts lean strongly in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all. As observed in that case the family arrangement can as a matter of law be inferred from a long course of dealings between the parties.

In *Maturi Pullaiah and anr.* v. *Maturi Harasimhan and ors.*(3) this Court held that although conflict of legal claims in *presenti* or in future is generally a condition for the validity of family arrangements, it is not necessarily so. Even *bona-fide* disputes present or possible, which may not involve legal claims would be sufficient. Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a

(1) [1971] S.C.C. 837.
(2) A.I.R. 1966 S.C 1836.
(3) [1955] 2, S.C. R. 22,

A family arrangement. If such an agreement is entered into bona fide and the terms thereto are fair in the circumstances of a particular case, the courts would more readily give assent to such an agreement than to avoid it.

In *Krishna Beharilal's* case (supra), this Court observed :

B "The dispute between the parties was in respect of a certain property which was originally owned by their common ancestor namely Chhedilal. To consider a settlement as a family arrangement, it is not necessary that the parties to the compromise should all belong to one family. As observed by this Court in *Ram Charan Das* v. *Girjanandini Devi and ors.* [1965] 3, S.C.R. 841, C the word "family" in the context of a family arrangement is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. If the dispute which is settled is one between near relations then the settlement of such D a dispute can be considered as a family arrangement— see *Ramcharan Das's* case (supra)."

Judged by the tests laid down in these decisions, we can reasonably come to the conclusion that Ex. B-2 and B-5 read together brought about a family settlement.

E This leaves us with the dispute relating to properties set out in Sch. I of the plaint.

So far as the properties set out in Sch. I of the paint are concerned, the High Court and the trial court have reached different conclusions. The trial court held that under Ex. A-2, Ramalingam Pillai had made a complete dedication of those properties F for charities and the management of the charities had been left to V. Rm. Shanmugam Pillai and after him to his successors. On the basis of those conclusions that Court held that the alienation of those properties is invalid and not binding, on the plaintiffs. The High Court felt unable to come to any firm conclusion on the evidence on record, as to whether the dedication made under Ex. A-2 by Ramalingam Pillai was complete or partial. Further G it came to the conclusion that the plaintiffs are precluded from questioning the management of those properties by defendants 1 to 4 in view of the various transactions between the parties referred to earlier.

It may be noted that the parties are agreed that charities H mentioned in Ex. A-2 have to be conducted in accordance with the directions given in Ex. A-2. The only question is who should conduct them. The further controversy between the parties is whether the dedication made under Ex. A-2 is partial or complete.

We agree with the High Court that the evidence on record is not satisfactory enough to reach a firm conclusion as to the nature of the dedication. Plaintiffs have failed to adduce acceptable evidence as regards the income of the properties set apart for charities. That being so, even if we accept the estimate made by the trial court regarding the expenses to be incurred for conducting those charities, we have no basis to find out the extent of the surplus that is likely to be left in the hands of the persons who manage those charities. Under these circumstances it is not possible to come to the conclusion that under Ex. A-2, Ramalingam Pillai had created a trust in respect of those properties for conducting the charities mentioned in Ex. A-2.

As observed by this Court in *Menakuru Dasaratharami Reddi and anr.* v. *Duddukuru Subba Rao and ors.*(1) that dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete a trust in favour of a charity is created. If the dedication is partial, a trust in favour of a charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not a dedication is complete would naturally be a question of fact to be determined in each case on the terms of the relevant document if the dedication in question was made under a document. In such a case it is always a matter of ascertaining the true intention of the parties, it is obvious that such an intention must be gathered on a fair and reasonable construction of the document considered as a whole. If the income of the property is substantially intended to be used for the purpose of a charity and only an insignificant and minor portion of it is allowed to be used for the maintenance of the worshipper or the manager, it may be possible to take the view that dedication is complete. If, on the other hand, for the maintenance of charity a minor portion of the income is expected or required to be used and a substantial surplus is left in the hands of the manager or worshipper for his own private purposes, it would be difficult to accept the theory of complete dedication. Ex. A-2, after setting out the various charities to be conducted concludes by saying that "If, after conducting the said charities properly, there be any surplus, the same shall be utilised by the said Shanmugam Pillai and his heirs for family expenses. They should also look after the same carefully and properly." This shows that the entire income of the properties set apart for charities was not thought to be necessary for conducting the charities. It was for the plaintiffs to establish that the dedication was complete and cosequently there was a resulting trust. As they have

(1) AIR 1957 S.C. 797.

A failed to establish the same, for the purpose of this case, we have to proceed on the basis that the dedication was only partial and the properties retained the character of private properties. Therefore the widows of V. Rm. Shanmugam Pillai had a beneficial interest in those properties—see *Kalipada Chakraborti and anr.* v. *Palani Bala Devi and ors*(1). As seen earlier they had alienated B their interest in those properties. For the reasons already mentioned, the plaintiffs are precluded from questioning the validity of those alienations. It is not open now to them to contend that the alienations in question are invalid. It is not necessary for us to decide in this case whether their successors can challenge those alienations. Suffice it to say that the plaintiffs are precluded from C challenging those alienations.

In the result this appeal fails and the same is dismissed with costs.

K.B.N. *Appeal dimissed.*

(1) [1953] S.C.R. 503.