
(1949) 03 MAD CK 0019
In the Madras High Court

Adiyalath Katheesumma and Another	APPELLANT
Vs	
Adiyalath Beechu alias Umma and Others	RESPONDENT

Date of Decision : 04-03-1949

Acts Referred:

Citation : (1949) 2 MLJ 268

Hon'ble Judges : Satyanarayana Rao, J;Panchapagesa Sastri, J

Bench : Full Bench

Judgement

Satyanarayana Rao, J.—This appeal arises out of a suit for partition by 15 out of 20. members of a Moppla Marumakkattayam tarwad. The

first defendant in the suit is the karnavan of the tarwad, and defendants 2 to 5 are the remaining members. The sixth defendant was impleaded in

the suit on the allegation that the first defendant had created a sham lease in his name over an item of the family property in anticipation of the suit

for partition. The plaintiffs claimed a share in the properties described in Schedules B and C attached to the plaint. A preliminary decree for

partition was passed by the learned Subordinate Judge of Tellicherry directing a division of the properties belonging to the tarwad as found by him

into 20 equal shares and of delivery of possession of 15 out of such 20 shares to the plaintiffs. He also granted other reliefs which are not material

for the purpose of this appeal and which are not now in dispute.

2. The appeal is by defendants 3 and 4 and is confined to three points raised on their behalf. The first point is whether the tarwad house and the

paramba attached to the house should be left undivided for the common residence and use of the members or whether it should be divided. The

point is covered by issue two in the case, and the learned Subordinate Judge

upholding the contention of the plaintiffs held that it should not be divided. The parties being Mopplas governed by the Marumakkattayam law and the right to claim partition is governed by the Mappilla Marumakkattayam Act, 1938 (Madras Act XVII of 1939). With reference to the division of tarwad house, Section 16 of that Act provides:

In a partition of tarwad properties, unless two-thirds of the members of the tarwad desire to the contrary, the tarwad house including the site or sites of any building appurtenant thereto, and such other land as is necessary for the convenient enjoyment of the tarwad house shall be kept undivided for the common use of all the members of the tarwad in which case, the charges of upkeep and maintenance of the tarwad house shall be borne by the member or members that live in the house.

3. Besides the site of the tarwad house there is land of the extent of 89 cents appurtenant to the house. The contention of the appellants is that so much of the land is not required for the convenient enjoyment of the tarwad house and that therefore the Court should have reserved only a reasonable portion of that extent for the convenient enjoyment of the tarwad house and divided the rest. The plaintiffs and the other defendants are opposed to such division. No material was placed before the lower Court to enable it to decide what proportion of the 89 cents of the land was essential for the convenient enjoyment of the tarwad house, and whether all of it is not required for the common use of all the members of the tarwad. In the absence of such evidence it is impossible to hold that the entire extent was not required for the convenient enjoyment of the tarwad house and that a portion alone would suffice. It was incumbent upon the appellants to establish by evidence that all the extent was not required for the convenient enjoyment of the tarwad house by the members. This they neglected to do and in the circumstances it cannot be said that the conclusion of the learned Judge on issue 2 is erroneous.

4. The second point raised by the third defendant is that four items of the plaint B schedule, items 9, 21, 22 and 23 should not have been divided as tarwad property, and that the Court below should have held that it was her absolute property. The property was gifted to the third defendant on the 19th of July, 1909, under Exhibit D-10 as marriage gift. The husband of the third defendant died in or about the year 1923. The contention of

the plaintiffs is that such stridhanam gifts revert back to the tarwad after the death of the husband and that therefore the tarwad is entitled to these

properties notwithstanding the gift in favour of the third defendant. The gift in terms purports to be an absolute gift for, the benefit of the third

defendant, her husband and her children. The operative part of the deed states:

I have hereby granted to you in Danam Teer on receipt of no consideration whatsoever the aforesaid four items of properties for your enjoyment

asstridhana, so as to enable you to give it for the enjoyment of your husband Pannambath Mayan. You and your descendants shall therefore hold

and enjoy the aforesaid properties in jenmam right for ever and ever, and on the expiry of the demises of the tenants, pay to them the value of their

kuzhikanoms and recover possession of the properties and until the properties are recovered possession of you shall collect the pattam and sundry

items (of purappad) in accordance with the terms of the aforesaid marupats, pay the Government assessment and enjoy the balance left over.

Hereafter I shall have no claim whatever either in respect of the aforesaid properties or of anything contained therein.

According to these recitals the donee is directed to hold and enjoy the aforesaid property in jenm right in perpetuity and gives a right to the

husband also to enjoy the property. The tarwad gave up under this document" all claims in respect of that property. If the deed were to be given

effect to, the third defendant undoubtedly gets an absolute right to the properties. Is there any warrant for the contention urged on behalf of the

plaintiffs that, by the customary usage the properties gifted under such circumstances would revert back to the tarwad after the death of the

husband. No such custom or usage has been established in this case. In Sundara Ayyar's Malabar Law at page 237 the following passage occurs:

There is also the practice for the relations of the wife to make what is called a Stridhana gift to the husband to enable him to maintain her. The gift

ordinarily reverts to the family though" not invariably on death of the wife without issue or on divorce. This gift seems to correspond to Kasi in

South Kanara which has similar incidents.

According to this passage if the stridhanam gift is to the husband with a view to enable him to maintain the wife, the gift on the death of the husband

or on divorce reverts back to the tarwad, the reason obviously being that the

duty of maintaining the wife is on the tarwad. In *Pakrichi v. Kunhacha* (1911) 22 M.L.J. 122 : ILR 36 Mad. 385 a case where the parties who were also Mopplas but were governed by the Muhammadan Law it was pointed out by Benson and Sundara Ayyar, JJ., at page 386:

It would appear that amongst the Marumakkattayam Moplas of Malabar gifts are often made to the husband of a girl given in marriage apparently as a contribution towards the maintenance of the girl and her future children. It was held in *Mariyam v. Abdulla* Second Appeal No. 1746 of 1805 (unreported), that such a gift became void on the death or divorce of the girl. Now according to Marumakkattayam law the tarwad is bound to maintain the women of the tarwad even after their marriage, and, if property is given to a husband for the support of his wife it stands to reason that, when he divorces her he should give back the property to the donor.

In the present case the gift was not to the husband but was an absolute gift to the third defendant. It is always open to the karnavan of the tarwad to make allotments of property for maintenance. (See Sundara Ayyar's book at page 149). The gift need not necessarily be restricted to the life of the donee, and may be an absolute gift for the benefit of the donee and her children. Even under Hindu law, it is within the competence of the manager to make a reasonable gift of property at or about the time of the marriage of the daughter of the family.

5. The property was enjoyed by the third defendant, and Exhibits P-6 dated 29th March, 1923 and Exhibit P-5 dated 12th April, 1933, are two marupads executed by a tenant in favour of the third defendant. These documents do not contain any admission by the third defendant that the property belonged to the tarwad as was erroneously thought by the learned Subordinate Judge. Even if the contention of the plaintiffs that after the death of the husband the property reverts back to the tarwad is well-founded, in this case the husband having died in 1923 and the third defendant having held the property and enjoyed it in her own right adversely to the tarwad, the rights, if any, of the tarwad became extinguished long ago, and the members of the tarwad cannot now claim a share in these items. We are therefore unable to agree with the conclusion of the learned Subordinate Judge that these items should be brought into the hotchpot and should be divided between the members. Items 9, 21, 22 and 23

therefore should be excluded from the partition and must be declared to be the absolute property of the/third defendant.

6. The third point is whether the fourth defendant is entitled to claim the share of his deceased mother who died before the suit. According to the

fourth defendant he and his mother became divided in status by a notice issued on their behalf to the karnavan, the 1st defendant, on the 27th of

October, 1941 (Exhibit D-12). As the mother therefore became divided in status, the share which she held in severalty devolved upon him as her

heir, and the property should be divided into 21 shares and 2 shares out of them should be allotted to him in the partition. The question for

consideration is whether the notice, Exhibit D-12, brought about a division in status between the mother and the other members of the tarwad. In

the case of Nayar tarwads, the Madras Act XXII of 1933 conferred a right upon a member of such a tarwad to claim a partition of the properties

and thus introduced an innovation in that law. As an extension of that right it has been held in *Kunchi Amma v. Mihakshi Amma* (1935) 70 M.L.J.

114 : ILR 59 Mad. 693, that the, doctrine of severance in status by a definite and unambiguous expression of the intention either by declaration or

conduct and communicated to the other coparceners and which was recognised and established by judicial decisions under the Mitakshara Law

was also extended to tarwads and tavazhis governed by the Marumakkattayam law. In the case of Mopplas governed by the Marumakkattayam

law an indefeasible right to claim partition by a member of the tarwad was conferred for the first time by the Mappilla Marumakkattayam Act,

1938 (XVII of 1939). The provisions of the, Nayar Marumakkattayam Act and the Mappilla Marumakkattayam Act being analogous, there is no

reason for not applying the principle of *Kunchi Amma v. Minakshi Amma* (1935) 70 M.L.J. 114 : ILR 59 Mad. 693 to members of Moppla

tarwads. The contention of the learned advocate for the appellant is that even under Mitakshara law in order to bring about a severance in status

by the exercise of the individual volition of a member to become separate by expressing a definite and unambiguous intention to get severed such

intention need not be communicated to the other members, and even if such a communication were necessary, a communication made to the

manager or karnavan would be sufficient compliance with the requirements of the rule. The question is whether this contention is well-founded.

7. Under Mitakshara Law the word "" partition "" or "" vibagha "" is used in a two-fold sense. It denotes a division of title or the right and also a physical division of the property. A physical division of the property may be brought about either by a suit for partition or by an agreement between the members dividing the properties. The division of the right may also be brought about by an agreement between the parties. The decisions of the Judicial Committee have now firmly established a further mode, by which a right can be divided, or in other words, by which the disruption of the joint status may be brought about without a de facto division of the property into specific shares and without the consent or concurrence of the other members of the family. A member possesses the liberty of deciding for himself, whether he should continue to be joint in status or sever himself from the joint family, that is, whether he wishes to continue to hold an undefined and unspecified share in the family property in jointness or wishes to hold it separately without being subjected to the obligations that arise and accrue from the joint status. If he once makes up his mind to get himself severed in this sense, all that he has to do is to express his decision to so sever in unequivocal terms and intimate the same to his co-sharers, that is, to convey to the other co-sharers his decision to possess the right in severally along with the other co-sharers. As has been repeatedly pointed out by the Privy Council in several decisions no member is entitled to question this decision; nor is he entitled to ask him for the reasons which induced him to make the choice. Immediately the communication is made, it results in the disruption of the status of that member and severs him from the rest of the family. The decisions bearing on this question have been recently examined, very exhaustively, by the Chief Justice and myself in the case reported in *Kurapati Radhakrishna and Another Vs. Kurapati Satyanarayana and Others*, , but that was for a different purpose. In *Suraj Narain v. Iqbal Narain* (1912) 24 M.L.J. 345 : L.R. 40 IndAp 40 : ILR 50 Cal. 84 (P.C.) : ILR 35 All. 80 (P.C.), the doctrine was formulated by the Judicial Committee at page 87 in these terms: What may amount to a separation or what conduct on the part of some of the members may lead to disruption of the joint undivided family and convert a joint tenancy into a tenancy in common must depend on the facts of each case. A definite and unambiguous indication by one member of

intention to separate himself and to enjoy his share in severalty may amount to separation. But to have that effect the intention must be unequivocal and clearly expressed.

This was further amplified in the next case in *Girja Bai v. Sadashiv Dhundiraj* (1916) 31 M.L.J. 455 : L.R. 43 T.A. : ILR 53 All. 300 (P.C.) : ILR

43 Cal. 1031 (P.C.) where the point was elaborately considered by Mr. Ameer Ali. At page 1047 after discussing the Hindu law texts in the

earlier portions of the judgment the requirements of the rule are thus stated : "" Once the decision has been unequivocally expressed and clearly

intimated to his co-sharers, (*Italics are mine*) his right to obtain and possess the share to which he admittedly has a title is unimpeachable."" This

passage therefore clearly emphasises the necessity of a member communicating or intimating his intention to his co-sharers. To the same effect are

the decisions of the Privy Council in *Syed Kasam v. Jorawar Singh* (1922) 43 M.L.J. 676 : L.R. 49 IndAp 358, *Balakrishna v. Ram Krishna*

(1931) 61 M.L.J. 362 : L.R. 58 IndAp 220 and *Ram. Narain Sahu v. Mussamat Makhna* ILR (1939) All. 680. It is unnecessary to extract

passages from these decisions, the real foundations for which is the decision in *Girja Bai v. Sadashiv Dhundiraj*. In the latest of the decisions *Ram*

Narain Sahu v. Mussamat Makhna ILR (1939) All. 680, their Lordships of the Judicial Committee quote at page 685 the passage from the

judgment of Sir George Lowndes in *Balakrishna v. Ram Krishna* (1931) 61 M.L.J. 362 : L.R. 58 IndAp 220, which reads as follows:

It is now settled law that the separation may be effected by a clear and unequivocal intimation on the part of one member of a joint Hindu family to

his co-sharers of his desire to sever himself from the joint family. This was Laid down in *Suraj Narain v. Iqbal Narain* (1912) 24 M.L.J. 345 : ILR

35 All. 80 (P.O.) : L.R. 40 LA. 40 The question was further examined in *Girja Bai v. Sadashiv Dhundiraj* (1916) 31 M.L.J. 455 : L.R. 43 LA.

151 : ILR 43 Cal. 1031 (P.C.) and the principle was reaffirmed, and the last mentioned case was followed in *Kawal Nain v. Budh Singh* (1917)

33 M.L.J. 42 : L.R. 44 IndAp 159 : ILR 39 All. 496 (P.O.) where Lord Haldane says, " the status of the plaintiff as separate in estate is brought

about by his assertion of his right to separate.

The necessity for communication to the other co-sharers is also considered and

Laid down by the decisions of our High Court. Soundararajan v.

Arunachalam Chetty (1915) 29 M.L.J. 816 : ILR 39 Mad. 59 was decided immediately after Suraj Narain v. Iqbal Narain (1912) 24 M.L.J. 345

: L.R. 40 LA. 40 : ILR 35 All. 80 (P.C.) and before Girja Bai v. Sadashiv Dhundiraj (1916) 31 M.L.J. 455 : L.R. 43 I.A. 151 : ILR 43 Cal. 1031

(P.C.). The passage already extracted from Suraj Narain v. Iqbal Narain (1912) 24 M.L.J. 345 : L.R. 40 IndAp 40 : ILR 35 All. 80 (P.O.), was

interpreted to mean that communication to the other co-sharers was necessary, and that in the case of a suit the service of summons on the other

members was such a communication.

8. The expression of intention may be by declaration or by conduct. In the case of conduct the intimation is given by the conduct which is brought

to the knowledge of the other members. Where the coparcener is a minor the volition to become separate may be exercised on his behalf by his

lawful guardian; but in that event in order to effect the severance it should be followed by a suit and a decree. When once the option exercised by

the guardian is followed by a suit which ends in a decree, the division in status dates back to the date of the notice. See Ayinampudi Kotayya and

Others Vs. Ayinampudi Krishna Rao by mother and guardian Ayinampudi Ammemma and Others, . If there are only two coparceners in the family

and one of them is a minor, the major member, it would seem, may communicate the intention to the natural guardian of the minor. See the

observation in Thavva Rangasayi and Others Vs. Thavva Nagarathnamma, . Venkateswara Pattarv. Manikyammal (1934) 69 M.L.J. 410 and

Kamepalli Ayilamma and Damineni Ramachendriah Vs. Mannem Venkataswamy, minor by Mother and Guardian, Rattamma and Others, . If,

however, the minor has no-guardian it cannot be that the adult member is prevented from separating himself. It would seem that it is sufficient if the

intention is made known to the other relations of the minor. See Venkateswara Pattar v. Manikyammal (1934) 69 M.L.J. 410, though the point

was not expressly decided.

9. Dnaneshwar Vishnu v. Avant Vasudeo ILR (1936) 60 Bom. 736, was a case where the paternal grandfather of the minor happened to be his

guardian also, there being only two coparceners. It was not a case of notice by which the intention was communicated but was a case where the

grandfather by a long course of conduct indicated his intention to sever. The minor had also his mother and maternal grandfather who were made

aware of the conduct and declarations of the grandfather. The minor was also a party to certain proceedings in which he was properly represented.

Having regard to those circumstances the Court held that the grandfather became severed in status from the minor. Broomfield, J., at page 745

states his opinion as follows:

When the judgments of the Privy Council are read as a whole, it may well be doubted, I think, whether their Lordships intended to make it an

essential condition that the declaration of intention to separate should be formally notified to every member of the family. No doubt the intention

must be published in some way. An act of volition which is kept secret could not be legally effective. There would indeed be no evidence in that

case that it was genuine. But" no formal declaration or notice is required. The intention may be evidenced by conduct, as held in Girja Bai's case

(1916) 31 M.L.J. 455 : L.R. 43 IndAp 151 : ILR 43 Cal. 1031 (P.C.) where reference is made to the case of (1879) ILR 4 434 (Privy Council) I

do not think that anything more is essential than publication in the manner appropriate to the circumstances of the case.

As I understand the passage, all that the learned Judge should have meant by the use of the word "" formal "" is that it need not be expressly

communicated by notice or other document. It is enough if it is intimated and brought to the knowledge of the other coparcener by some means.

This is made clear by the sentence in which the learned Judge says that "" no formal declaration or notice is required."" I do not think the learned

Judge intended by this passage to go behind the Privy Council decisions in which their Lordships have definitely laid down that there should be an

intimation of the intention to the other co-sharers. I do not therefore treat this as an authority supporting the contention of the appellant that no

communication is necessary to the other co-sharers. For the foregoing reasons I am clearly of opinion that in order to bring about a severance in

status it is essential that there should be a communication of the intention to the other co-sharers.

10. Reference was made to the decision in Nyapati Narayana Rao Vs. Madhavalapu Purushothama Rao, but the question now before us did not

arise for decision in that case. All that was decided was that in order to effect a severance in status it is not necessary that the communication should have been received by the other coparcener; it is enough if it is posted. The facts in that case were somewhat peculiar. The registered notice by which severance in status was intended to be effected was posted at Bezwada on 3rd August, 1926, to the other coparcener who was living at Guntur and would have in the usual course been received on the 4th but it was actually received by him only on the 9th. On the 4th the coparcener who issued the notice executed a will and died on the 5th. The question was whether the share could be disposed of by the will. If he was divided in status, of course the will could validly operate on his share. Otherwise the property would have passed by the survivorship to the other coparcener. Varadachariar, J., in answer to the contention that until the receipt of the notice on the 9th the severance could not have been effected and as meanwhile the testator died resulting in the consequence of the property passing by survivorship said:

The answer is that the issue of notice, is, so far as the testator is concerned, sufficient to prevent the operation, of the principle of survivorship. He was certainly justified in expecting that in the ordinary course his notice would have been delivered to the first defendant on the 4th or at least on the 5th. It is unnecessary for us to say what the legal result would be in a case where a notice is posted in circumstances when it will be obviously impossible for it to reach the addressee before the testator's death.

In the case where the intention was expressed by conduct it may sometimes be difficult to fix the exact date when the severance was effected, as pointed out by the Privy Council in a recent case in *Mussamat Inder Kuer v. Mussamat Pirthipal Kuer* (1945) 2 M.L.J. 182 (P.C.). The decision referred to by the learned Subordinate Judge in his Judgment, *Chelikani Jagannadharao and Another Vs. Merla Ramanna and Others*, has obviously no bearing upon the question now in issue. In that case an agreement between two brothers which was not intended to be acted upon was held not to be sufficient to effect a division in status. This was affirmed by the Privy Council in *Ramanna v. Jagannadha* (1941) 2 M.L.J. 58 :

L.R. 68 IndAp 75 : ILR 1942 Mad. 886 (P.C.) The communication to the other coparceners being therefore an essential condition of the doctrine

it cannot be said that the communication to the manager or the karnavan is sufficient compliance. In Mayne's Hindu Law, 10th edition at page 562

the learned author says in paragraph 451:

It is open to an adult coparcener to express his intention to separate from a minor coparcener by communicating his intention to the mother or

other natural guardian of the minor; On principle it is difficult to see why the intention should be communicated to every member of the family. It

would seem to be sufficient if the intention is clearly intimated to the managing member, or where it is by the managing member to some of the

members of the family. No doubt, the expression of intention must be published in some way so as to be legally effective.

The learned Counsel for the appellant strongly relied upon this passage in support of his contention that notice to the managing member is sufficient

compliance, as the managing member represents the other coparceners. With greatest respect I am unable to agree with the view of the learned

author. It is difficult to perceive what the principle is which the learned author had in mind. A manager, of a joint family has the undoubted right and

power to represent the family in all transactions and in suits by or against the family. As representing the family he has also the right to alienate

family property so as to bind the members subject to certain restrictions recognised by law. He has also the power to borrow on behalf of the

family so as to bind the shares of the other members, which power also is equally subject to certain restrictions. All these powers are exercisable

by him on behalf of the family treating it as a unit. In transactions or suits inter se between the members however he has no such right, and the law

has not recognised it. In suits for partition all the coparceners have necessarily to be impleaded as parties to the action. The Privy Council pointed

out in *Palani Ammal v. Muthuvenkatachala Moniagar* (1924) 48 MX.J. 83 : L.R. 52 IndAp 83 : ILR 48 Mad. 254 (P.O.).

It appears to be obvious to their Lordships that in a suit for partition no effective decree can be made for a partition unless all the coparceners

whose addresses are known, are parties to the suit and that it is the decree alone which can be evidence of what was decreed.

Even if the separation that was sought in the suit for partition was only of the plaintiff in the action and not between the other coparceners inter se

the manager of the family is not entitled to represent the coparceners who are defendants in the action. If the family however consists of several branches the head of a branch is entitled to represent the branch, as in such case no question of any division between the members of the branch inter se arises for consideration. Similarly in a case of agreement to partition no binding agreement can be reached or entered into without the concurrence and the consent of the other coparceners, and the manager's consent alone will not be sufficient. It is difficult therefore to see on what principle can the opinion of the learned author be based so as to justify the representation by the manager of the other coparceners to receive the notice. The division in status even if it be of one member carries with it the consequence of putting an end to the right of survivorship between the separating member and the other coparceners. The separating member from the moment of his severance is immune from the obligations of the family and is not liable for any of the debts incurred after that date and will not equally be bound by alienations made afterwards. The extension of the principle in the manner contended for would lead to very inconvenient results and would seriously prejudice the rights of the other members. Without their knowledge the manager may manipulate notices severing status so as to throw the burden upon the other coparceners. It would be open to the other members, after notice was received, to consider whether they should continue joint or separate. The manager can act only for and on behalf of the joint family as a unit. In my opinion, therefore, in view of the express language employed by the Privy Council in the decisions already referred to, a communication to the manager alone is insufficient to disrupt the status of the family. The communication must be to all the other coparceners, and in the case of minors to their natural guardian. As in the present case the notice was issued only to the first defendant, the karnavan, and not to other members of the tarwad there was no division in status, and the fourth defendant is not entitled to claim the share of his mother. In my view, therefore, the view of the learned Subordinate Judge on this point is correct.

11. The result is, the appeal is allowed only to the extent of excluding items 9, 21, 22 and 23 from the partition. In other respects the appeal is

dismissed. The parties will pay and receive costs in proportion to their success in this appeal.

12. As we have differed on the third point dealt with in my judgment the question has to be referred to a third Judge and for this purpose the

matter may be placed before His Lordship the Chief Justice.

13. The point on which we have differed may be stated as follows:

14. Whether a member of a Mitakshara Hindu joint family or a member of a tarwad governed by Marumakkathayam law can become divided in

status by issuing notice of his intention to separate to the manager of his joint family or the karnavan of his tarwad without issuing notice to the other

members.

Panchapagesa Sastri, J.

15. This appeal raises an important question of law. The suit was one for partition by 15 out of 20 members of a Moppilla Marumakkathayam

tarwad. Section 13 of the Madras Act XVII of 1939 confers a right on any individual member of a tarwad to claim to take his or her share of the

properties of the tarwad over which the tarwad has power of disposal and separate from the tarwad. Section 14 gives a similar right to two or

more persons belonging to the same tavazhi to take their share of the properties of the tarwad over which the tarwad has power of disposal,

separate from the tarwad and enjoy the same jointly, with all the incidents of tarwad property. Section 17 provides for division per capita among

all the members of the tarwad then existing. Section 18 is to the effect that succession to the property obtained by an individual member on

partition shall be governed by the Islamic law of inheritance. The Madras Marumakkathayam Act (Act XXII of 1933) which applied to all the

Hindus in the presidency of Madras governed by the Marumakkathayam law of inheritance had conferred a similar right on a tavazhi represented

by the majority of its members to claim to take its share of all the properties of the tarwad over which it has power of disposal and separate from

the tarwad. The share so obtained by the tavazhi is taken by it with all the incidents of the tarwad property. (See Section 38, Clauses 1 and 2).

These rights of partition are statutory rights conferred on the parties in respect of properties which until then were by customary law impartible

except by agreement amongst the members to divide the properties. If the matter were res Integra it is open to doubt whether this statutory right of

partition of tarwad properties is not confined only to a division by metes and

bounds alone. It has, however, been held in *Kunchi Amma v.*

Minakshi Amma (1935) 70 M.L.J.114 : ILR 59 Mad. 693 that the right of partition conferred by the Madras Marumakkathayam Act XXII of

1933 being an indefeasible right of every tavazhi to demand partition of its own share in the tarwad property to which the other tavazhis must

submit, whether they like it or not, the said right covers not merely a division by metes and bounds but also a division in title leading to severance of

joint status. The language of Section 13 of the Madras Act XVII of 1939 being the same as in Section 38 of Madras Act XXII of 1933 and the

provisions of the two Acts relating to partition being analogous, the principle of the aforesaid decision would be equally applicable to the members

of the Mopilla tarwads as well. Notwithstanding the references in Section 14 of the later Act to enjoyment of the properties with incidents of the

tarwad property and in Section 18 to property obtained by an individual member on partition it would follow that the individual member's right to a

division of title or the right as distinguished from the right to physical division of the property, or in other words a division in status, has to be

recognised even in the case of Mopilla tarwads. The statute, however, throws no further light as to the manner in which this individual right of a

member to bring about a division in status has got to be exercised. So far as the substantive right is concerned the position is analogous to the right

of a member of a Mitakshara joint family to bring about a disruption of his joint status by his individual volition alone without the concurrence of the

other members. In the case of Mitakshara joint families the Judicial Committee have in a series of decisions affirmed -the existence of this individual

right and adverted to the manner of its exercise by any one of the coparceners. These have been developed from out of the original principles of

Hindu law formulated in the texts relating to partition of property. The pronouncements of the Judicial Committee are based on an examination of

the texts and are developments of the law implied and implicit in them on a proper interpretation thereof. So far as the statutory rights conferred by

the two Madras Acts are concerned it is common ground between the learned advocates on both sides that the same rules should be applicable to

the exercise of the right under the Acts as in the case of the exercise of a right by a member of the Mitakshara joint family.

16. With these prefatory remarks I shall now proceed to state a few facts which are necessary to understand the point which emerges out of them.

In 1941 the tarwad in question consisted of 21 members, the present fourth defendant and his mother being members thereof. On 27th October,

1941, the said two perrons issued a notice through their advocate to the present first defendant who was the karnavan even then, claiming

partition and delivery of their share of the tarwad properties. The first defendant through his advocate sent a reply, Exhibit D-13, dated 3rd

November, 1941, wherein it was stated that his client was entirely agreeable to the partition of the tarwad properties. The fourth defendant and his

mother filed O.P. No. 50 of 1941 in the Court of the Additional District Munsif, Tellicherry, u/s 5 sub-section 2 of the Madras Mopilla

Marumakkathayam Act XVII of 1939 (See Exhibit D-14). Paragraph 4 of the said petition states that the petitioners are quite prepared to file a

suit for partition and delivery to them of the tarwad properties under the Mopilla Marumakkathayam Act XVII of 1939.

17. The first defendant was the sole respondent to that petition. When the present suit was instituted on 6th September, 1944, the tarwad

consisted of only 20 members as the fourth defendant's mother had died by that time. Hence the plaintiffs who are 15 in number claimed each

1/20th share of the properties only. The fourth defendant, however, contended that the virtue of the notice Exhibit D-12 given on behalf of his

mother and himself to the first defendant, the karnavan of the tarwad in 1941, there has been a division of status so far as they were concerned

which would result in their being entitled each to 1/21 of the tarwad properties and that consequent on the death of the fourth defendant's mother,

thereafter, her 1/21 share devolved upon the fourth defendant exclusively with the result that in the present partition suit he is entitled to 2/21 shares

of the tarwad properties, the other members being entitled only to 1/21 share each. The lower court held against this contention on the ground that

the notice given on behalf of the fourth defendant and his mother was insufficient in law to bring about a division of status inasmuch as it was given

only to the karnavan, the first defendant and not communicated to the other members of the tarwad.

18. The point that now comes up for decision is, as regards, the legal effect of a notice claiming partition and asserting divided status, and

communicated only to the karnavan of the tarwad or manager of the Hindu family and not communicated or intimated to the other members. The

question of law acquires additional importance as it is one really dealing with the right in Hindu law of a junior member of the Mitakshara family to

become divided from the other members of the family by a clear and unambiguous declaration to separate himself from the rest. The exposition of

the law on this subject is found in two leading decisions of the Judicial Committee. One is Suraj Narain v. Iqbal Narain (1912) 24 M.L.J. 345 :

L.R. 40 IndAp 40 : ILR 35 All 80 (P.C) and the other is Girja Bai v. Sada-shiv. Dhundiraj (1916) 31 M.L.J. 455 : L.R. 43 IndAp 151 : ILR 43

Cal. 1031 (P.C.). Subsequent decisions of the Judicial Committee have re-affirmed the same . It is not necessary to refer to them in detail as they

are carefully reviewed in my learned brother's judgment in this case and also in his judgment in the case reported Kurapati Radhakrishna and

Another Vs. Kurapati Satyanarayana and Others, . It is true that these decisions refer to the communication of the intention to divide on the part of

one member to the other co-sharers. The present point now to be determined, whether the communication by a junior member of his intention to

divide to the manager of the family alone is- sufficient by itself to bring about a disruption of the joint family and to bring about a division of status

So far as that junior member is concerned, did not arise in any way in these decisions. Nor is there any pronouncement negating the sufficiency of

such a notice. It is true that wherever there is a reference to the communication, their Lordships of the Judicial Committee speak of the

communication to the co-sharers. But the question now is whether a communication to the manager is not really a communication to all the co-

sharers in view of the representative character of the manager of a Mitakshara joint family. The basis of the right of junior member to bring about a

division of status as between himself and the rest of the family, is as has been emphatically laid down by the Privy Council, that it is only his

individual right dependent solely on his own volition and not restricted by the necessity for getting the concurrence of the other members of the

family. An examination of the Hindu law texts from out of which the doctrine is evolved by the Judicial Committee will, be found in Girja Bai v.

Sadashiv Dhundiraj (1916) 31 M.L.J. 455 : L.R. 43 IndAp 151 : ILR 43 Cal. 1031 (P.C.), although the earlier decision in Suraj Narain v. Iqbal

Narain (1913) 24 M.L.J. 345 : L.R. 40 IndAp 40 : ILR 35 All. 80 (P.C.) did not state the principle behind the statement of law enunciated

therein. Indeed even before the decision of the Judicial Committee in the later case in Girja Bai v. Sadashiv Dhundiraj (1916) 31 M.L.J. 455 : L.R.

43 IndAp 151 : ILR 43 Cal. 1031 (P.C.) the High Court of Madras had in their judgment in Soundararajan v. Arundchalam Chetty (1915) 29

M.L.J. 816 : ILR 39 Mad 159 carefully reviewed the original texts bearing on the point. The necessity for a communication to the co-sharers is not

to be found in the texts examined and referred to. Placitum 5 of Chapter II of the Viramitrodaya (see Setlur's Hindu Law Books on Inheritance, p.

316), explaining the meaning of the term ""assembled together"" lesR; in Manu, Chapter IX, Sloka 104, would even seem to indicate that all that is

required is that the intention to separate should be published and not necessarily communicated to the rest of the joint family, before it becomes

effective. It is not altogether without significance that even in Suraj JVarain v. Iqbal Narain (1913) 24 M.L.J. 345 : L.R. 40 IndAp 40 : ILR 35 All.

80 (P.C.) and in Kawal Main v. Budh Singh ILR (1917) All. 496, the statement of law does not in terms refer to the necessity of a communication

to the co-sharers. The Full Bench decision of the High Court of Madras in Soundararajan v. Arunachalam Chetty, understood the passage in Suraj

Narain v. Iqbal Narain (1913) 24 M.L.J. 345 : L.R. 40 IndAp 40 : ILR 35 All. 80 (P.C.), as requiring that the intention to separate should be

expressed to the other co-sharers. The necessity for a communication to the other members of the joint family has also been laid down by this

Court in the decision in Kamepalli Ayilamma and Damineni Ramachendriah Vs. Mannem Venkataswamy, minor by Mother and Guardian,

Rattamma and Others, . It is but reasonable to require that the intention to divide should not be secret and kept unpublished and the condition

requiring its publication to the other members of the family is perhaps necessitated by the circumstances relating to the exercise of this right on the

part of a junior member and its repercussions and legal effect with regard to the rest of the members of the family. This Court has been consistently

rejecting all arguments to establish a division of status by recitals in documents made by an individual member un-communicated to the other

members of the family.

19. Whether or not a junior member of the joint family should be given the freedom to get himself divided by a clear and unambiguous declaration

to that effect even if the same had not been communicated to the other members as for instance, by registering a document stating the avowed

intention clearly and unambiguously or by other equally unquestionable ways of publication is probably a matter which can only be dealt with at the

present stage of the case law as it has developed, by legislative enactment alone. Even as early as 1916 that learned Judge, Sadasiva Aiyar, J., of

our High Court as a member of the Full Bench has pointed out in his judgment in *Soundararajan v. Arunachalam Chetty* (1915) 29 M.L.J. 816 :

ILR 39 Mad 159 the necessity for the Legislature dealing with the matter to prevent the danger of perjured oral evidence and other inconveniences

that might result from a recognition of the doctrine of unilateral declaration of a member to bring about a division of status.

20. Proceeding then on the assumption that a communication is necessary to the other members of the joint family the question arises whether in

the case of a junior member expressing his intention to become divided the communication of such an intention to the manager of the family is not

sufficient compliance with the requirements of the law. The reference in the judgments of the Privy Council to a communication to the other co-

sharers does not necessarily require that the communication must be to each individual co-sharer separately. There is no express statement by the

Judicial Committee to that effect in any of its decisions. Their Lordships were not dealing exhaustively with the various situations that might arise but

were only emphasising the requirements that the intention to become separate on the part of a member should be published or brought home to the

rest of the family as they were the members that would be affected by such an act. They could not be deemed in this connection to have denied or

negatived the ordinary representative character of the manager of a joint Hindu family to represent the family as a whole in matters pertaining to it.

Their Lordships' observations are general and do not expressly deal with cases where some of the co-sharers are either minors or of unsound

mind or where they are themselves members of a smaller coparcenary within the main joint family as in cases where the main joint family contains

branches with separate common ancestors of such branch or branches. It is only the High Courts which have laid down that this communication

should be made to persons who would be guardians of the minors if there were to be a partition, and also that no separate communication need be

given to the coparceners of a branch whether they are majors or minors, if the communication has been made to the head of that particular branch.

21. If the underlying principle of the doctrine is the unquestionable right of the individual coparcener to get himself separated in status by the

manifestation of his own intention, solely dependent on his own volition, and the inability of the other coparceners to resist the same, I do not see

any reason why the Courts should add additional onerous conditions to the exercise of such a right which are not absolutely needed by paramount

consideration of justice, equity and good conscience. A rigid adherence to the ipsissima verba found in the pronouncements of the Judicial

Committee in the cases where they were not dealing with or contemplating the variety of circumstances relating to the composition of any particular

joint family would in my judgment be really arresting the normal development of Hindu law by a legitimate application and extension of its basic

principles to meet the varying circumstances of particular cases with special peculiarities. Such has been the normal course of development of the

Hindu law not only by the commentators and the Hindu legists but also by judicial precedents, particularly, the classical judgments of the Judicial

Committee for over a century. Freedom, theology and law alike should broaden from precedent to precedent.

22. The question then arises whether there is anything which precludes the recognition of the representative character of a manager of a joint Hindu

family in relation to the particular matter now under consideration. I do not see anything either in Hindu law or usage which would preclude the

Court from recognising such representative capacity in the manager in the present case as well. The separation of one member is not necessarily

the separation of the remaining members of the family inter se. Indeed in the case of a declaration and a communication by one member of his

intention to divide from the family the other members of the family will continue to be as before, members of an undivided family and the manager

of the joint family would continue to be the manager of the joint family excluding the member who wishes to separate and will continue to represent

the joint family and the other members thereof even after the particular member has got himself divided from the rest. On principle, therefore, it

should be held that the communication to the manager is really a communication to all the co-sharers. If that is so, it will satisfy even the very language of the Judicial Committee. It is said that the manager of the joint family has no right to represent it in transactions or suits, inter se between the members. It may be that in the suit for partition by metes and bounds the presence of all the co-sharers, is necessary, not only under the rules of procedure governing partition suits but even otherwise, because the necessity for a just and convenient division by metes and bounds and allotment of specific items should take in other considerations than merely an ascertainment of the shares. Even in partition suits where there are sub-branches they are in a majority of cases represented by the heads thereof, the representative character of such persons so far as that branch is concerned being accepted. Long before the present rules of procedure were evolved, the Sadar Court had upheld a decree in a suit for partition for 1/5th share of the properties brought by a coparcener against the manager alone as the sole defendant even though there were three other brothers along with the defendant who would be entitled to 1/5th share each if they had asked for the partition of their shares. A specific objection on the ground of non-joinder of the other brothers in the partition suit was rejected by the Zillah Judge and the Sadar Court on appeal. The particulars of that litigation will be found referred to in the decision *Palaniammal v. Muthuvenkatachala Maniagarar*¹. That decision may or may not be governing precedent now but it shows that the recognition of the representative character of the manager even in a suit for partition by one member against the rest of the family was not regarded as foreign to the spirit of Hindu law and usage. The matter may be looked at from another point of view also. It is not uncommon in Hindu Joint families that one junior member thereof renounces his share in favour of the rest of the family either for consideration or otherwise. It is frequently the case that prodigal and spendthrift sons are cut off from the rest of the family by discharging their existing debts and giving some further amounts to such members. The renunciation or release by any one junior member is generally evidenced only by a document in favour of the manager of the joint family who in such cases is deemed to represent the rest of the family. Eminent Judges of this Court, Sir V. Bashyam Iyengar and K. Srinivasa Aiyangar, and Kumaraswami Sastri, JJ., with their large experience and intimate knowledge of

the details of the joint family system throughout the presidency (including not only what is now known as Tamil Nad but Andhradesa as well) have

emphatically stated that generally such a renunciation by release by one member does not bring about a division of status as between those who

continue in the family. (See at page 778 in Palaniammal Vs. Muthuvenkatachala Maniagarar and Others, and also in V. Rangasami Naidu and

Another Vs. Sundarajulu Naidu and Another, I believe that in most of those cases documents are generally between the member cut off and the

manager of the family representing all the other members. That at any rate is my experience. In Wasantrao v. Anandrao (1904) 6 Bom. L.R. 925,

the document of release was in favour of the father alone and it was held that that release by one son really operated in favour of the entire joint

family and this decision was affirmed by the Privy Council in Anand Rao and Ors. v. Vasantrya Mahadevrao and Ors. (1907) 17 M.L.J. 184 : 9

Bom. L.R. 595 (P.O.). In all those cases it has been taken for granted that the manager's representative capacity is not taken away by the, fact

that the other party to the transaction is himself a member of the family. The transaction is really between one member of the family and the rest

regarded as a unit which continues to be a joint family and is capable of acting through its head and manager. Not infrequently also are

arrangements made between one member of the family in his individual capacity and the manager representing the whole family with regard to the

financial advances to be made by the family to the particular member and under special arrangements as to its re-payment or adjustment later on.

In such arrangements the joint family may speak "" by the mouth of its managing member."" See Bhurumal v. Jagannath (1943) 1 M.L.J. 70 : L.R. 70

IndAp 57 : ILR 1942 Kar. 33 (P.C.). Indeed to deny to the manager the representative character in transactions of this sort would be an

unnecessary handicap to a junior member and may drive him to the necessity of borrowing from strangers which may not always be in his interest

to do so. I do not therefore, find anything which should compel me to confine the representative character of the manager to transactions with

strangers alone.

23. The learned editor of Mayne's Hindu Law (10th edition) has stated in Article 451 at page 562 that

on principle it is difficult to see why the intention should be communicated to every member of the family. It would seem to be sufficient" if the intention is clearly intimated to the managing member. No doubt the expression of intention must be published in some way so as to be legally effective.

Although there are no direct decisions on the point, it seems to me that this position regarding the sufficiency of a notice communicated to the

manager alone was taken for granted in the decision in *Ayinampudi Kotayya and Others Vs. Ayinampudi Krishna Rao* by mother and guardian

Ayinampudi Ammemma and Others, . In that case, there was communication only to the manager of the joint family although there were other

members to whom the intention to separate on behalf of the minor plaintiff was not communicated. Their Lordships decided that the severance of

status was from the date of such notice to the manager and not from the date of the institution of the suit and hold that the renewals of earlier

promissory notes by the manager after the date of such a notice would not be binding on the separating member. No doubt, the manager in that

case was the father of the other coparcener to whom notice demanding a partition was given but that would not make a difference on this question.

It is not also without some significance that even in the decision of the Judicial Committee in *Girja Bai v. Sadashiv Dhundiraj* (1916) 31 M.L.J. 455

: L.R. 43 IndAp 151 : ILR 43 Cal. 1031 (P.C.) their Lordships say that the notice of 1st October, 1908, coupled with the suit for partition

amounted to separation with all its legal consequences. See *Girja Bai v. Sadashiv Dhundiraj* (1916) 31 M.L.J. 455 : L.R. 43 IndAp 151 : ILR 43

Cal. 1031 (P.C.). The notice referred to was a notice to the manager of the joint family alone and there was no communication to another

coparcener entitled to 1/3rd share. In *G. G. G. Appeal No. 10 of 1934* (unreported) a notice claiming a partition communicated to the manager

alone was held to be insufficient not because it was not communicated to the other co-sharers but only because the coparcener who claimed the

partition was at the time of his demand, disqualified and was not entitled to a share and there was no fresh notice by him after the disqualification

was removed by Act XII of 1928. I do not, however, wish to stress this as it must be admitted the present point was not expressly considered and

decided therein.

24. The doctrine of division of status takes in not only the express declaration or - intention to divide but also such fixed and unequivocal intention

evidenced by conduct also. The "underlying principle is the same in both the cases. In. cases where separation is established by conduct it is

difficult to decide the precise point of time when the separation may be said to have taken place but it is noteworthy that the various acts of

conduct may not always be communicated to all the members. Separation is really a matter of proper inference to be drawn from all the

circumstances taken together. This would seem to suggest that the necessity for the communication even to the other members of the joint family is

more in the nature of evidence to indicate the clear and unambiguous and fixed determination of the individual to separate himself in status and not

part of any substantive right of the other members restrictive of the individual volition of the separating member. However, that may be, it is

sufficient in this case to state that the requirement of communication to the co-sharers (in cases of express declarations) even taking it in a very

literal sense, is complied with. by a communication to the manager who may very well be taken to be a representative of all the other co-sharers

even for the purpose of receiving intimation of such intention on the part of the separating member. I am, therefore, of opinion that the

communication to the manager alone is sufficient to bring about a division of status.

25. Lastly, it is argued that there may be the danger of collusion between one member of the family and the manager which can operate to

prejudice the rights of the other members if the representative character of the manager should be recognised as aforesaid. The same danger, if

any, exists also in the case of transactions with strangers to the family and, I do not see why the other members of the family should be in a better

position than they. Considerations of equity in proper cases may modify any hardship that may be caused to persons who have had no actual

notice, as to which see the decision in Kashiram Bhagshet Shete Vs. Bhaga Bhaushet Redij, . As against this it may be pointed out that in a case

where there are numerous coparceners in an ordinary Mitakshara joint family and much more so in the case of Marumakkathayam tarwads which

usually consist of a very large number of members, insistence on communication of the intention to separate to everyone of the other co-sharers

individually may operate to the prejudice of a member who wishes to separate and make bequests of his separated property to near relations or

friends. In any case considerations of possible hardship should not be the determining factor in deciding these questions. If, however, the law were

clear that communication to every one of the co-sharers individually is necessary because of the pronouncements of the Judicial Committee, I

agree that the inconvenience or hardship in the case of tarwads consisting of numerous members is irrelevant and is no ground for relaxing the rules,

but in my judgment the Judicial Committee have not laid down such a rule. I consider that the view adopted by me is really one which would

facilitate the exercise of the right of partition conferred by the Legislature and not operate to retard it. I, therefore, hold that the fourth defendant

and his deceased mother must be deemed to have become divided in status even in 1941 and that the parties to the suit are each entitled to 1/21

share of the tarwads properties excepting the fourth defendant who should be given 2/21 shares thereof. In other respects, I agree with the

conclusion of my learned brother.

Opinion of Viswanatha Sastri, J.

26. The question of law on the answer to which the learned Judges differed has been formulated by Satyanarayana Rao, J., in these terms:

Whether a member of a Mitakshara Hindu joint family or a member of a tarwad governed by the Marumakkattayam law can become divided in

status by issuing notice of his intention to separate to the manager of his joint family or the karnavan of the tarwad without issuing notice to the

other members.

Having regard to the form of the question, it was argued that it raised two distinct issues:

(a) Should notice be given to the other members of the family of the intention of an individual member to separate himself from the family in order

to bring about a division in status between him and the other members ?

(b) If notice of such an intention has to be given to the other members, is a communication to each and every one of them necessary or is notice to

the head of the family sufficient to effect a severance ?

These questions have to be decided by the application of the rules of Hindu law derivable from the writings of the commentators and

Nibhandakars and the decisions of the Judicial Committee. I would have had little difficulty in answering the question propounded if I were to be

guided solely by the ancient Hindu jurists without being embarrassed by judicial pronouncements which profess merely to interpret or declare the

law as laid down by them. I do not wish to cover a wider field than is absolutely necessary for the decision of this case especially as the matter

now under consideration has received the particular attention of the remarkably able and acute lawyers who formulated the doctrine now in

question.

27. Under the Hindu law "partition" may mean and comprise both a division of right, i.e., a severance in the joint status, and a division of

property. We are dealing in this case only with a division of right, or a severance of the joint status.. This may result from an agreement between

the members of the joint family or from any other act or conduct which, in law, would create a severance. An agreement is not the only mode by

which a division in status can be brought about, the contrary view held by some of the early decisions being no longer law.

A definite and unambiguous indication by one member of intention to separate himself and to enjoy his share in severalty may amount to

separation."-Suraj Narain v. Iqbal Narain (1912) 24 M.L.J. 345 : L.R. 40 IndAp 40 : ILR 35 All. 80 (P.C.).

Is the giving of a notice to the manager or to all the other members of the family of this intention to separate an integral part of the rule according to

the texts of Hindu law ? If not, is any and if so, what formality has to be observed by a member who desires to separate by a declaration of his

intention ? The answer will be clear if we examine the jural basis of this doctrine as expounded by the early writers on Hindu law.

28. I may preface my examination of the texts by observing that the ancient law givers, far from encouraging the continuance of the joint family

recommended a partition mainly on religious grounds ^^foHkxsrq /keZo`f)%\*\* says Gautama (28-4) ^^i`FkXnSofiO;deZdj.kkr~ /keZo`f)e~

vis{kek.kk% foHkts;q%** ""Let those who desire an increase of merit by the separate performance of worship for the gods and the manes,

divide." See also Manu Chapter IX-iii. The word "Dharma" in Sanskrit which I have translated as "merit" has reference to religious acts such as

the performance of panchamahayajnas, the secret of the Romans. If the family is joint, worship of the gods, Vaisvadeva, Shradhas and the feeding

of guests are all single for the whole family and the spiritual benefits derived therefrom are shared by all the members, while if they separate, each

performs these acts separately and acquires religious merit for himself in a much larger measure. I am not sure whether Seshagiri Aiyar, J., had any

textual authority in view when he observed in Soundararajan v. Arunachalam (1915) 29 M.L.J. 816 : ILR 39 Mad. 159 as follows:

It is enough to say that the essential characteristics of Hindu law as understood by the writers of the Benares school are survivorship and

representation. So far as a cursory examination of these treatises goes the idea of survivorship is in entire consonance with the genius of Hindu law

as it is administered in South India.

Once and for all, Vijnaneswara emphatically asserted and established the sons' right to separate from the father even during his lifetime. Even in the

days of Gautama 15 centuries before Vijnaneswara the right to partition received a fillip for the religious sentiments above described. Partition is

therefore not looked upon with disfavour by the early treatises on Hindu law.

29. It is best to start the examination of the texts with Vijnaneswara, the most celebrated of the commentators, who belonged to the 11th century.

He takes the following sloka from Yajnavalkya Smrithi for comment:

Hkw;kZ firkegsikiċ½kk fucU/kks nzO;eso ok A

r= L;kRln`"ka LokE;a firq% iq=L; pSo fg AA

In land, corrody (annuity, etc.) or wealth received from the grandfather, the ownership of the father and the son is only equal.

(Yajnavalkya, Chapter II, section. 121.)

30. The relevant portion of the commentary of Vijnaneswara is as follows:

;fRirkegsu izfrxzgfot;kfnuk yC/ka r= firq% iq=L; p

LokE;a yksdizfl)fefr d`Rok foHkkxksċ½fLrA fg ;Lekr~ rr~ ln`"ka lekua rLekUu firqfjPN;So foHkkxks ukfi firqHkkZx};e~ AA

----- rFkk p ljtLdk;ka ekrfj lLi`gs p firfj foHkkxe~ vfuPNR;fi iq=sPN;k iSrkegnzO;foHkkxks HkofrA

(Setlur's Mitakshara, pages 646-648.)

In property obtained by a paternal grandfather through gifts, conquest, etc., the ownership-of both, the father and the son is well-known to the

world and therefore there is a partition (of, this property). Because there is equal right, therefore the partition is not merely at the desire of the

father nor does the father get a double share....And thus though the mother is having: her menstrual courses (has not lost the capacity to bear

children) and the father has attachment (to wealth) and does not desire a partition, yet by the will (or desire) of the son 3 partition of the

grandfather's wealth does take place.

I have given a literal translation of the text even though it appears a little uncouth in its English garb. The astonishing and often perplexing brevity of

these ancient writers renders necessary a word of explanation. In the passage which I have omitted with a. view to economise space and which I

have indicated by asteriks, a text of Manu to the effect that while the parents live, though they are old and infirm, the son has no control over the

parental estate is referred to. Another text of Narada allows the father a double share at a partition. Yet another text of Gautama allows a partition

only when the father desires partition and the mother is past the child-bearing age. Vijñaneswara distinguishes these pronouncements and explains

them away as applicable to a partition of the effects acquired by the father himself and not to a partition of the ancestral or paternal grandfather's

property. With regard to ancestral property he rules that there can be a partition at the will or desire of the son (putrachaya) because of the equal

right (sadrishasamya) of the father and son. You have here got the idea of individual volition (Ichha) bringing about a severance in a joint family.

31. Dealing with the other texts in their chronological order, the Saraswati Vilasa, said to have been compiled in the early years of the 16th

century, has been repeatedly recognised by this Court and the Judicial Committee as of special authority in South India. It is a work written in

prose and not in verse as supposed by Seshagiri Aiyar, J. The discussion of this topic starts with placitum 22 and continues till placitum 30.

॥ १/२२ ॥ १/२ foHkkxks uke nzO;/keZ;ks% vU;rjL; i` FkDdj.kfeR;kg Hkk#fp% AA

॥ १/२३ ॥ १/२ foKku;ksxh rq foHkkxks uke nzO;leqnk;fo""k;k.kka vusdLokE;kukarnsdns""ks""kq O;oLFkkiufeR;kg AA

īġ½24īġ½ rUul grs Hkk#fp% /keZfoHkkxs rn~Hkkokr~ AA

īġ½25īġ½ keZfoHkkxks uke /keZek=foHkkx%
i`FkXoS"onsoipaegk;Kkuq""Bku`iSr`dkfndj.ke~ AA

īġ½26īġ½ rPp ds""kkafr~ vR;Urafu%Lokuka nzO;kHkkokr~ /keZfoHkkx% drZO;
% foHkkxs /keZo`f)% L;kr~ bfr xkSreLe`rs%

/keZo`f)dkekuka /keZek=foHkkxks ok drZO;% AA

īġ½27īġ½ vr ,o fo""kq% /keZek=a ok foHktsfnfr A vR;Urfu%Lokukfevr ""ks""k%
AA

īġ½28īġ½ vusu Kk;rs ifjHkk""kka fouk ladYiek=s.kkfi foHkkxflf)% A ;Fkk
iqf=dkdj.ka ifjHkk""kka fouk ladYiek=kfRI/;fr bfr AA

īġ½29īġ½ nzO;orka rq nzO;foHkkxkuUrjeso /keZfoHkkx% A foHkġ½k% Hkzkrj%
dq;qZ% ukfoHkġ½k% dFka p usfr fuHkġ½drZO;r;k

/kekZu~ oS"onsokfndku~ vf/kd`R;ksiġ½Rokr~ AA

īġ½30īġ½ vr"p fu%LokukferjkuqeR;k rnkUrjs.kkfi i`Fkx/kekZuq""Bkueso /
keZfoHkkx% /kfudkuka rq /kufoHkkx%AA

(22) Bharuchi says that ""division"" means the separation (keepintg apart) of
either wealth or religious. (23) Vijnanayogi, however says that division

(partition) is the adjustment of the ownership of several persons in the common
wealth by assigning portions m several ownership. (24) Bharuchi

does not accept this as it is absent in a division of dharma (religious duty) (25)
By division of ""dharma"" is meant a division of dharma alone, that is

to say, separate performance of Vaisvadeva, the five great sacrifices and
ancestral rites. (26) Therefore in the case of the extremely indigent owing

to the absence of wealth (to be divided) division of Dharma (religious duty) may
be made. On a division of Dharma (religious duty) alone can be

made among those who desire an increase of (religious) merit in view of the
saying of Gautama By partition (religious) merit increases."" (27)

Therefore Vishnu says ""order him divide religious duties alone,"" (the
expression) ""if absolutely indigent"" being supplied or understood). (28) From

this it is known that without any speech (or explanation) even by means of a
determination (or resolution) only, partition is effected, just as an

appointed daughter is constituted by mere intention without

speech. (29) In the case of those who have wealth, partition of religious duty
follows only upon the partition of wealth for, religious duties such as

Vaisvadeva, etc., have to be performed according to the (following) text ""divided

brothers may perform but not the undivided ones under any circumstances." (30) Therefore in the case of the indigent, the separate performance of religious duties with or without the consent of others, constitutes a division of religious duties, but in the case of the rich (there takes place) a division of property.

32. According to the Saraswati Vilasa, a division in status is brought about by "Sankalpa" alone without "Paribhasha". "Sankalpa" I have

translated as "determination, resolution, intention" and "Paribhasha" as "speech, explanation." The reference to the "putrika" in placitum 28 throws

a flood of light on the meaning of the author. The conception of "putrika" or "appointed daughter" is now obsolete. It will be recalled by those

familiar with the Smrithis that the marriage of a brotherless maiden was not recommended by the Smrithikars particularly Manu and Yajnavalkya,

for fear that the father of the girl might, without even so much as an express stipulation at the time of the marriage, but merely by his own unilateral

intention and mental resolution, treat the girl as his own son or annex the first born son of the girl to his own family, he himself being sonless. Either

the girl took the place of a son to her own father or her son became the son of his maternal grandfather and his own father lost the spiritual,

ministrations he and his ancestors would normally be entitled to. Hence the chorus of disapprobation of a brotherless maiden, whose hand would,

for that very reason, be competed for eagerly in modern days. The point relevant to the present discussion is that the "putrika" may be constituted

by a mere unilateral intention on the part of the father.

vfHklaf/kek=kRiqf=dsR;sds""kke~ A rRla''k;kUuksi;PNsn~ Hkzkr`dke~ AA

The expression vfHklaf/kek=kr connotes the same idea as. This silent speechless annexation of the putrika and the putrikaputra by the unilateral

intention of the father is referred to by the author of Saraswati Vilasa as a parallel doctrine when he states that mere "Sankalpa" or "determination

or "intention" is enough to bring about a division in status.

33. The next treatise that has to be considered in order of date is the Virarnitro-daya of Mitra Misra written somewhere in the first half of the 17th

century. It is one of the most exhaustive of the Nibhandas and closely follows the Mitakshara. Vijnaneswara dealt with a division at the desire of

the son. Mitra Misra extends the privilege to all coparceners including grandsons.

The relevant portions of the text are these:

v= euqopus lesR;sR;usu ikf{kda lkfgR;euw|rs cgqRoor~ A
vU;Fkk ,dsPN;k };ks"p Hkzk=s% foHkkxks u L;kr~ lefegr rq fu;E;rs A rPp

foo{kke% A

34. In the Manu's text the term "" assembled together "" merely recites (but does not insist on) the assemblage (of coparceners) which may take

place like the plurality in the expression "" brothers "". Otherwise, partition could not take place at the desire of one coparcener or where there are

two brothers, only. The term "" equally "" however is restrictive. We shall consider this subject later. (Chapter II, placitum 5):

v= p iq=sPN;k ;ks thof}Hkkxks ;"pkthof}Hkkx% l ,dsPN;kfi HkoR;fo"ks""kkr~
AA vr ,o foHkkxa izdzE;

;RdkR;k;usuksi½e~&vizkIrO;ogkjk.kka /kua O;;fooftZre~ U;ls;qcZU/
kqfe=s""kq izksf""krkuka rFkSo p AA bfr rnfi lEere~ A vU;Fkk

rnuqefreUrjs.k foHkkxkHkkos r)uL; cU/kqfe=s""kq U;klfo/kkue~ vuqiiUua L;kr~
AA

Here too there is no distinction between a partition during the lifetime of the father or after his death and partition at the desire of the sons may

take place or even by the desire (or at the will) of a single (coparcener). In support of this view is the text of Katyayana dealing with partition. The

wealth of those who have not attained (the age of) discretion should not be disbursed (spent) but deposited with relatives and friends. Likewise the

wealth of those who are abroad (in a distant place). Otherwise, if partition could not take place without their consent, the direction for deposit of

their wealth with relatives and friends would be inappropriate "" (Chapter II, placitum 23). . In placitum 23 the author says that partition or division

may"take place at the will or desire, even of a single coparcener (Ekechhaya). In the next placitum he extends to a grandson and great-grandson

the right which he conceded to the son.

35. Lastly we come to the Vyavahara Mayukha of Nilakantabhatta written in the beginning of the 17th century. With characteristic terseness and

lucidity, he starts the law as follows:

nzO;lkekU;kHkkos½fi Rokksi½ga foHk% bfr O;oLFkke=s.kkfi HkoR;so
foHkkx% A cqf)fo"ks""kek=eso fg foHkkx% A

rL;SokfHkO;ftads;a O;oLFkk AA

Even in the absence of any common (joint family) property severance does indeed result by the mere declaration "I am separate from the "

because severance is a particular state (or condition) of the mind and the declaration is merely a manifestation of this mental state (or condition).

(Chapter IV, S. iii-1.) Emphasis is laid on the "" Budhivishesha "" (particular state or condition of the mind) as the decisive factor in producing a

severance in status and the declaration is stated to be merely as "" Abhivyanjika "" or manifestation which might vary according to circumstances.

36. Now an examination of the texts of Hindu law leads me to the conclusion that the severance of the joint status so far as the separating member

is concerned is a matter of his individual decision, the desire on his part to sever himself from the joint family and enjoy his hitherto undivided share

separately from the others I may say that the texts do not countenance the idea that even if the intention to be divided is kept locked up as a secret

in the bosom of the dividing member, he cannot claim that there has been a severance. To have that effect, some outward manifestation, indication, or

publication of his intention either by word of mouth or by conduct is requisite. If, as stated in the texts and accepted by decisions of authority, an

intention to divide is inferable from conduct, there is no question of formal notice being given of the intention of the separating member to sever

himself from the other members of the family. It could not be said in such a case that the severance in status has taken place at a particular point of

time or by a formal communication to the other members of the family. In (1879) ILR 4 434 (Privy Council) , the Privy Council regarded the

conduct of one of the two members of a joint family

when he left the joint residence and withdrew himself from commensality as indicating; a fixed determination henceforward to live separate from his

cousin

and treated:

the fact of his borrowing money for his separate maintenance, as well as his making a will, as indicating, at all events, that he himself considered that

a separation had taken place.

The conclusion was based on the inference of intention derivable from the acts and declarations of the member who, it was alleged, had separated

himself, and not from the conduct or attitude of any other party. In (1903) ILR

30 231 (Privy Council) , the Judicial Committee stated:

But here again the conduct of the parties must be looked at in order to arrive at what constitutes the true test of partition of property according to

Hindu law, namely, the intention of the members of the family to become separate owners.

In the case of a division in status brought about by conduct, all that can be said is that there is a publication or manifestation of an intention to divide

and that is all that the texts of Hindu law required.

37. It must however be confessed that the decided cases present greater difficulty than the texts. As early as 1865, the Calcutta High Court in, the case of *Bulakeelal v. Inderputtee Koowar* (1865) 3 W.R. 41 held as follows:

And any act or declaration showing an unequivocal intention on the part of a shareholder to hold or enjoy his own share separately and to

renounce all rights upon the shares of his coparceners constitutes a complete severance or partition.

Again in the case of *Vatokoer V. Rowshan Singh* (1867) 8 W.R. 82, the same Court expressed itself in these terms on the question of separation:

We find that Sohun did publicly and unequivocally by petition presented in Court declare his intention to become from that date divided in estate.

Such an intention amounts to a valid separation though not immediately perfected by an actual partition on the estate by metes and bounds. The

acts and declarations of Sohun Singh showing an unmistakeable intention to hold and enjoy his own estate separately, and to renounce all rights

upon the shares of his coparceners, constitute, in our judgment, a complete severance or partition.

This passage from the judgment of the Calcutta. High Court has been accepted by the Judicial Committee in *Girja Bai v. Sadashiv Dhundiraj*

(1916) 31 M.L.J.455 : L.R. 43 IndAp40 : ILR 35 All. 80 (P.C.) : ILR 43 Cal. 1031 (P.C.) as laying down the law correctly. There is no

reference here or in the earlier case from the Weekly Reporter to the necessity of a communication of the intention of the separating coparcener to

the other coparceners if a severance in status is to be brought about. As late as 1911, this Court Laid down after considerable argument and

deliberation, that the preliminary decree in a partition suit effected a severance in status, *Thandayuthapani Kangiar and Others Vs. Ragunatha*

Kangiar and Others, . Then came the decision of the Judicial Committee in Surajnarain v. Iqbal Narain (1912) 24 M.L.J. 345 : L.R. 40 I.A with

the following categorical statement of the legal position:

A. definite and unambiguous indication by one member of intention to separate himself and to enjoy his share in severalty may amount to

separation, but to have that effect the intention must be unequivocal and clearly expressed. Suraj Narain alleged that he separated a few months

later; there is, however, no writing in support of his allegation, nothing to show that at that time he gave expression to an unambiguous intention on

his part to cut himself off from the joint undivided family.

The necessity for a communication of the intention of a member to separate himself to the other members of the family is not adverted to by their

Lordships, either because they did not consider it an essential component of the rule or because it was not necessary in the circumstances of the

case to deal with that aspect of the question.

38. Soon after the decision of the Privy Council, a Full Bench of this Court had to consider its scope and effect. In Soundarajan v. Arunachalam

Chettiar (1915) 29 M.L.J. 816 : ILR 39 Mad, Sir John Wallis, C.J., held that the texts to which I have referred in this judgment did not support

the doctrine of partition by unilateral act. Seshagiri Aiyar, J., went one step further and held that the weight of textual authority was against the

contention that an unilateral declaration by one member of a joint family of his intention to become divided created a severance. Sadasiva Aiyar, J.,

however held that the doctrine propounded by the Judicial Committee in Surajnarain v. Iqbal Narain (1912) 24 M.L.J. 345 : L.R. 40 I.A was by

no means a novel one, though the Madras High Court had all along dissented from the Calcutta High Court and consistently held that a mere

declaration by one member was ineffective to bring about a severance in status. All the three learned Judges, however, held that the decision of the

Privy Council in Surajnarain v. Iqbal Marain (1912) 24 M.L.J. 345 : L.R. 40 I.A left them no option but to hold that a member of a joint Hindu

family became separated from the other members by the fact of suing them for partition. It may be observed that no question of notice to the other

members of the intention of one member to separate was raised in the reference to the Full. Bench. Sadasiva Aiyar, J., however stated that the

phrase "" clearly expressed"" in the decision of the Privy Council meant ""clearly expressed to the definite knowledge of the other coparceners."" In

answering the reference the learned Judge stated his conclusion in these terms:

A member" of a joint Hindu family becomes separated from the other members by the fact of suing them for partition and by the unequivocal

declaration mentioned in the plaint in that suit when such unequivocal declaration has been definitely expressed to the other coparcener, or

coparceners through the Court or otherwise.

I have now to consider the authoritative pronouncement of the Judicial Committee on this topic in *Girja Bai v. Sadashiv Dhundiraj* (1916) 31

M.L.J.455 : L.R. 43 IndAp 151 : ILR 43 Cal. 1031. (P.C.), which, the later decisions both of the Privy Council and of the High Courts in India,

have purported to follow and apply. The question in that case was whether Harihar, the original plaintiff in the action, had become divided from his

nephews Dhundiraj and Nilkant and their sons who were defendants 1 to 4. Dhundiraj the first defendant was the de facto manager of the joint

family after the death of his father Atmaram in 1899. On 1st October, 1908, Harihar gave a registered notice to Dhundiraj that he wanted to have

a partition of his one-third share of the joint family property. On 18th October, 1908, Dhundiraj replied asking Harihar not to have the property

partitioned but agreeing to have a division if Harihar insisted upon it. On 21st October, 1908, Harihar brought a suit for partition against Dhundiraj

and Ors.. The defendants filed a written statement admitting the claims and agreeing to have a division.. On 17th June, 1909, Harihar died before

any decree could be passed in the suit and his widow Girja Bai applied as his heir-at-law to continue the suit. The defendants opposed her

application on the ground that Harihar's rights have devolved upon them by survivorship and his widow had no right to proceed with the suit. This

contention was upheld by the Judicial Commissioners of Nagpur, but rejected by the Privy Council. After an examination of the relevant texts of

Hindu law, their Lordships refer to the well-marked distinction that exists in Hindu law between a severance in status so far as the separating

member is concerned and a de facto division into specific shares of the property held until then jointly and laid down the law in these terms:

One is a matter of individual decision, the desire on the part of any one member

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

It is difficult to say that their Lordships of the Judicial Committee who purported to found themselves on the texts of Hindu law, Laid it down as an integral part or essential condition of the rule permitting severance by unilateral declaration of intention to become divided, that there should have been a communication of that declaration to the other members of the family. The expression "" once "" occurring in the passage above quoted is not to be Understood as meaning ""if and not otherwise "" or "" unless and until "" or "" then and not till then."" It is riot as if in this passage their Lordships were particularly considering the claim of the surviving coparceners by the right of survivorship and repelling it because they had. been clearly intimated about the unequivocal declaration or intention by Harihar to. divide himself. Their Lordships were merely emphasising the principle that it is the inherent right of every coparcener to demand a partition and if he expresses his intention to do so, neither the other members nor the Court have any right to enquire into his reasons or motives but have merely to give effect to his right. That their Lordships did not intend to lay down that the issue of a notice to the other coparceners was an essential part of the doctrine of severance by unilateral declaration appears from what they stated at page 1050 of the report:

The intention to separate may be evinced in different ways, either by explicit declaration, or by conduct. If it is an inference derivable from conduct, it will be for the Court to determine whether it was unequivocal and explicit.

The position is made clearer still by the concluding portion of the judgment at

page 1051 of the report:

In the present case, Harihar, the husband of the appellant, unequivocally and unmistakably manifested his intention to separate himself from the

defendants, and to hold, possess, and enjoy his unquestioned interest separately from them. In their Lordships' judgment, this was sufficient, under

the Hindu law, to constitute a separation and to divide him in estate from his coparceners.

The later decisions of the Privy Council do not call for any detailed examination since they purport merely to reiterate the statement of the law

contained in the decision above cited. In *Kaval Nain v. Budh Singh* (1917) 33 M.L.J. 42 : L.R. 44 IndAp 159 : ILR 39 All. 496 (P.C.), Viscount

Haldane referred to the judgment of the Judicial Committee in, *Girja Bai v. Sadashiv Dimdiraj* (1916) 31 M.L.J. 455 : L.R. 43 IndAp 151 : ILR

43 Cal. 1031 (P.C.), as laying down that the commencement of a suit for partition effected a separation from the joint family and that it was

immaterial in such a case whether the co-sharers assented. He added that:

a decree may be necessary for working out the result of the severance and for allotting definite shares, but the status of the plaintiff as separate in

estate is brought about by his assertion of his right to separate, whether he obtains a consequential judgment or not.

The severance in status is here stated to be brought about by the assertion of the right to separate and there is no qualification that the other co-

sharers should be notified regarding the assertion of that right. In *Ramalinga Annavi v. Narayana Annavi* (1921) 43 M.L.J. 428 : L.R. 49 IndAp

168 : ILR 45 Mad. 489 (P.C.) Mr. Amir All in delivering the judgment of the Board observed:

An unambiguous and definite intimation of intention on the part of one member of the family to separate himself and to enjoy his share in severalty

has the effect of creating a division of the interest which, until then, he had held in jointness. This intention was clearly intimated to the coparceners

when the plaintiff Narayana served on them the notice on the 30th July, 1909. That notice effected a separation so far as his branch of the family

was concerned.

Their Lordships apparently had in mind the facts of the particular case where a notice had been issued. In *Syed Kasam v. Jorawar Singh* (1922)

43 M.L.J. 676 : L.R. 49 IndAp 358 : ILR 50 Cal. 84 (P.C.), Viscount Cave in delivering the judgment of the Judicial Committee observed:

It is settled law that in the case of a joint Hindu family subject to the law of the Mitakshara, a severance of estate is effected by an unequivocal

declaration on the part of one of the joint holders of his intention to hold his share separately, even though no actual division takes place, and the

commencement of a suit for partition has been held to be sufficient to effect a severance in interest even before decree.

There is no reference here to the necessity for a communication to the other members of the family. In *Balkrishna v. Ramkrishna* (1931) 61 M.L.J.

362 : L.R. 58 IndAp 220 : ILR 53 All. 300 (P.C.), it was held by the Judicial Committee that one of the four brothers by name Lal Man had

become separated from his. brothers by reason of his conduct and actings. Sir George Lowndes stated the law in these terms:

It is now settled law that a separation may be effected by a clear and unequivocal intimation on the part of one member of a joint Hindu family to

his co-sharers of his desire to sever himself from the joint family. This was laid down in *Suraj Narain v. Iqbal Narain* (1912) 24 M.L.J. 345 : L.R.

40 LA. 40 : ILR 35 All. 80 (P.C.) The question was further examined in *Girja Bai v. Sadashiv Dhundiraj* (1916) 31 M.L.J. 455 : L.R. 43 IndAp

151 : ILR 43 Cal. 1031 (P.C.) and the principle was re-affirmed, and the last mentioned case was followed in *Kaval Nainv. Budh Singh*¹.

The next decision of the Judicial Committee calling for notice is *Babu Ramasray Prasad v. Radhika Devi* (1935) 43 L.W. 172 (P.C.), where Sir

John Wallis observed as follows:

It is however well settled that a member of a joint family may effect a separation in status by giving a clear and unmistakeable intimation by his acts

or declarations of a fixed intention to become separate even though he goes on living jointly with the other members of the family and there is no

division of property, *Balkrishna v. Ramkrishna* (1931) 61 M.L.J. 362 : L.R. 58 IndAp 220 : ILR 53 All. 300 (P.C.)

In all the three cases immediately above cited, a severance in status was inferred merely from the conduct of the parties which of course must have

been known to the members of the family. In the case of *Ramnarain Sahu v. Msi. Makhna* (1939) 2 M.L.J. 569 : ILR 1939 All. 680 (P.C.), their

Lordships of the Judicial Committee held that if a coparcener, or if he is under a disability, any person entitled to act for him, demands a

separation of his share in a pending suit for partition, there is a severance in status even though no relief is granted by the decree. Sir George

Rankin in delivering the judgment of the Judicial Committee referred to the previous decisions of the Board in these terms:

The right of a member of a Hindu family who is sui juris to separate himself in estate and interest by declaring his intention was thus stated by Sir

George Lowndes in *Balkrishna v. Ramkrishna* (1931) 61 M.L.J. 362 : L.R. 58 IndAp 220 : ILR 53 All. 300 (P.C.)."" (Then follows the passage

already extracted above from the judgment in 53 All. 300).

From the foregoing discussion it will be observed that there is no decision of the Privy Council which has gone to the length of holding that where

there has been ""a definite and unambiguous indication"" or ""a clear and unequivocal declaration "" by one member of his intention to separate,

nevertheless, there is no severance in status unless and until notice of such intention or declaration has been communicated to the other members of

the family. Nor does the Judicial Committee invariably insist upon a communication or notice to the other members of the family of the intention of

one member to divide himself from the others It must however be conceded that when they do refer to a notice or communication or intimation of

the intention to divide, they refer to an intimation to the other members of the family.

39. In the case of a severance in status brought about by conduct-and it has been repeatedly recognised by the Privy Council that it can be so

brought about-there is no question of a notice or communication of the intention to divide. The texts quoted by me regard the unilateral decision or

the individual volition and desire of a member of the joint family as the crucial severing factor, the indication, manifestation, or publication of such

intention being merely evidentiary. In other words, notice or communication of an individual's intention to divide, to the other members of the

family, is neither a condition nor a pre-requisite of the severance in status, but is only of evidentiary value and importance. Partition does not create

title in the coparcener or give him a right to his share. It only enables him to obtain what is his own already. Notice of an intention to become

divided is not the root of title and is not like a notice to quit which is a condition precedent to the accrual of the right or an integral part of the cause

of action itself. The other members of the family have no voice in the matter. They cannot veto the declaration of the member. They cannot resist

his determination. If you impose a condition that it is only if all the other members of the family are duly notified of the intention of an individual

member to divide, there could be a severance in status so far as he is concerned, you are imposing a clog or fetter on the right of the individual

member. You are abrogating pro tanto the "unilaterality" of the doctrine of unilateral declaration. At the same time it can easily be realised that it

is of vital interest to the other members of the family to be sure of their position vis-a-vis the dividing or outgoing member. Therefore it is that the

declaration of intention to separate must be clear and unequivocal, expressed in such a form that it would not be open to the separating coparcener

afterwards to say that he still continues to be a member of the joint family. It is for this, reason that an outward manifestation or clear indication of

an intention to divide is also required Suppose a man registers a document declaring that he is a divided member or publishes a notice to that effect

in the newspaper. Is it to be said that he has not become divided in status simply because his coparceners have not been individually notified of his

intention ? The only reasonable rule that can be deduced from the texts and the several decisions of the Judicial Committee is that the declaration of

an intention to divide on the part of a member" of the family should be clear and unequivocal and should be indicated, manifested or published in

such a manner as is appropriate in the circumstances of the case. One method, but not the only method, of such manifestation or publication is by

delivering a notice containing a declaration of intention to become divided to the other members of the family.

40. It may be pointed out that even after the decision of the Privy Council in *Suraj Narain v. Iqbal Narain* (1912) 24 M.L.J. 345 : L.R. 40 IndAp

40 : ILR 35 All. 80 (P.C.), the majority of the Full Bench in *Soundararajan v. Arunachalam* (1915) 29 M.L.J. 816 : ILR 39 Mad. 95, accepted

the doctrine of severance by unilateral declaration with considerable reluctance and hesitation, opposed as it was to the opinion of that eminent

jurist, Sir V. Bhashyam Aiyangar, and the view taken in several previous decisions of this court. This unreceptivity to what was considered to be a

somewhat revolutionary doctrine, is discernible in the hesitancy and extreme caution with which it was continued to be applied in this court in spite

of the lead given by the Judicial Committee. In *Kamepalli Ayilamma and Damineni Ramachendriah Vs. Mannem Venkataswamy, minor by Mother*

and *Guardian, Rattamma and Others*, it was Laid down by Sir John Wallis and Kumaraswami Sastri, J., that if a coparcener does not

communicate, during his lifetime, his intention to become divided to the other coparcener or coparceners, the mere declaration of his intention,

though expressed or manifested, does not affect a severance in status. In that case the only other coparcener happened to be a minor and their

Lordships held that notice of the intention of the major coparcener to become divided should have been given to the mother of the minor, his

natural guardian, so as to reach the latter during the lifetime of the major coparcener. In their Lordships' view the receipt of the communication of

an intention to divide by the other members of the family was essential to create a severance in status. In the case of minor coparceners who had

no natural guardians, their Lordships held that "" there must be such an intimation as the case admits of"". Is the coparcener desiring separation from

such a minor to have a guardian ad litem or ad hoc constituted for the minor ? What is to happen if nobody was willing to accept responsibility for

the minor and receive the notice ? The Court cannot appoint a guardian of the interest of a minor coparcener in a joint Hindu family under the

Guardians and Wards Act. Is the major coparcener to forego the right to become divided in status until the minor becomes a major or is he to be

forced to file a suit for partition ? Why should he suffer because there is no lawful guardian to receive notice on behalf of a minor coparcener ?

These difficulties were, however, not considered by the learned Judges. Another case to which reference has been made in the course of the

argument is *Thavva Rangasayi and Others Vs. Thavva Nagarathnamma*, . That was a suit for partition instituted on behalf of a minor. This case has

no direct bearing on the point now under consideration. The Court merely purported to reiterate the rule Laid down by the decision of the Judicial

Committee already cited. All the Judges, however, agreed that if an adult coparcener filed a suit for partition, the severance takes place from the

date of the plaint and not from the date when summons is served on the defendants, and the same result would follow if a suit for partition filed on

behalf of a minor happens to be decreed by the court. This can only be on the principle that the date of communication to the defendants by

service of summons in the suit is not the starting point of the severance in status.

41. I now turn to two decisions of this court which have considerably qualified the rule as to the necessity for communication of an intention to

divide. The first is *Rama Iyer v. Minakshi Ammal* (1930) 33 L.W. 384 where, a father after instituting a suit for partition against his son, but before

the son was served with summons, settled his share of the property on his daughters and died before the suit came on for trial. The son attacked

the settlement on the ground that until summons was served and the contents of the plaint were communicated to him, there was no division in

status between the father and the son and the settlement having been executed by an undivided member of the joint family was invalid. Madhavan,

Nair, J., upheld the validity of the settlement with the following observation:

If the severance of the joint status can be brought about by individual volition, and the assent of the cosharers is not necessary for it, then, I fail to

see how it can be said there could be no severance so far as the plaintiff in a suit is concerned, unless the intention is actually communicated to the

other coparceners. This position is clearly not opposed to the ruling of the Privy Council which states that the unequivocal intention of the

separating coparcener to-be effective must be "clearly expressed" to the other coparceners. Notice to the other cosharers of the plaintiff's

intention to separate would be necessary to make the severance operative against them so that they may know he is claiming his share of the joint

family property from the date of the plaint and that the severance is final; but it cannot, I think, be a condition precedent to bring about a severance

of the joint family status so far as the plaintiff is concerned. To make this severance effective as against the remaining coparceners notice would no

doubt be necessary.

I very much regret my inability to follow the reasoning. If the filing of the plaint effects a severance so far as the plaintiff is concerned, then, the

defendants must necessarily become severed from him. If service of summons and the plaint on the* defendants is necessary to. make the

severance effective as against the defendants, then till the service of summons; there can be no severance even as regards the plaintiff. There cannot

be two dates for the severance, one on the date of the institution of the suit so far as the plaintiff is concerned and the other on the date of the

service of the summons as regards the defendants, when the parties between whom severance is effected are the same, namely, the plaintiff on the

one hand and the defendants on the other.

42. The next decision that calls for detailed notice is Nyapati Narayana Rao Vs. Madhavalapu Purushothama Rao, decided by Varadachariar and

King, JJ. In that case a father gave a registered notice of his intention to divide himself from his son, but the notice did not reach the son till four

days after the death of the father. After issuing the notice the father executed a will making dispositions of his share of the property and died. The

son contested the validity of the will on the ground that the father was undivided with him at the time of his death and the law of survivorship

prevailed against the will. The Court, however, upheld the will, their Lordships taking the view that a severance of status took place from the date

when the communication of the intention to separate was sent by the father and not from the date when it was received by the son. The Court held

that the date of receipt of the communication by the coparcener was, in the circumstances, immaterial. Varadachariar, J., who delivered the

judgment of the Bench observed as follows:

It is true that the authorities lay down generally that the communication of the intention to become divided to other coparceners is necessary, but

none of them lays down that the severance in status does not take place till after such communication has been received by the other coparceners

...We see no reason to interpret the reference to "communication" in the various cases as implying that the severance does not arise until notice

has been actually received by the addressee or addressees.

Later in the course of the judgment His Lordship referred with approval to the decision of Madhavan Nair, J., in Rama Iyer v. Meenakshi Ammal

(1930) 33 L.W. 384 and held that the issue of the notice, in so far as the testator was concerned, was sufficient to prevent the operation of the

principle of survivorship. It is necessary to pause and consider the effect of this pronouncement. Suppose on 1st April, 1948, A, a member of a

joint Hindu family made a clear and formal declaration in writing that he was divided in status from the other members of the family and also

published its contents in a newspaper. Suppose he died without giving notice to the other members of the family of his intention to divide and the other members of the family became aware of his declaration a year after his death, say, on 1st January, 1949. Is it to be said that the unilateral declaration was effective so far as A was concerned as and from the 1st January, 1948, and so far as the other members were concerned only from 1st January, 1949 ? Or is it to be said that as soon as the other members came to know of the declaration of intention on 1st January, 1949, it related back to 1st January, 1948, so far as they too were concerned. A joint family may, and a tarwad does often consist of numerous individuals. There are tarwads containing more than 100 members, many of whom are pursuing different walks of life in foreign countries. There may be infants in the tarwad and children in the womb. Is it to be said that service of notice of an intention to divide on the part of one member to every one of the other members is essential, if a severance in status is to be brought about ? Supposing the notice is served on the karnavan today and on the junior members on various subsequent days running over a couple of months does the severance take place on the date of the issue of the notice or on the date when service can be said to have been effected on all the members ? Or does the severance take place on each of the dates when notice is served on each of the members so far as the particular recipient is concerned ? If, as held by Varadachariar, J., the severance in status takes place as soon as the dividing member has published his intention to divide even though the other members of the family have not been notified about it, does it not really mean that communication to the other members of the family is not indispensable to create a severance ? Supposing the addresses of some members of the family are not known and a member is about to die and is desirous of getting himself divided and making a provision for his wife and daughters, is he to serve those members by some method analogous to substituted service ? Is he prevented from executing a will till all the members are served either in person or by the method of substituted service ? If subsequent notice to the other members acts retroactively and creates a division in status from the date of the declaration itself, are you not effectively doing away with the necessity of communication as a condition of severance ? In the present case, all the members of the tarwad today know that the deceased

member, shortly before her death published her intention to become divided, by issuing a notice to the karnavan demanding a partition and the notice itself is exhibited in the suit. If their present knowledge is to be related back to the date of the suit of the notice, why should not the deceased member be considered to have died divided in status though a considerable interval has elapsed between the date of the issue of the notice and the date when it was filed as an exhibit in the case and came to the knowledge of the other members ?

43. The only logical rule furnished by the texts of Hindu law as interpreted by the decisions of the Privy Council, appears to me to be that an unilateral declaration of an intention to become divided on the part of a member of a joint Hindu family effects a severance in status. The declaration must be clear, unequivocal and unambiguous. There must be some manifestation, indication, intimation or expression of that intention to become divided, so as to serve as authentic evidence in case of doubt or dispute. What form that manifestation, expression or intimation of intention should take would depend upon the circumstances of each case, there being no fixed rule or rigid formula. The despatch to or receipt by the other members of the family of a communication or notice announcing the intention to divide on the part of one member of the family, is not essential nor its absence fatal, to a severance in status.

44. Mr. K.P. Ramakrishna Aiyar, the learned advocate for the respondents, drew my attention to the serious consequences of the view I am taking, particularly, the danger of tainted evidence about such declarations and manifestations of intention to become divided. Even if a communication were regarded as essential to create a severance, the law does not require that the declaration or the communication should be in writing. Oral declaration of an intention to divide and oral communication of such intention are quite sufficient in law. The Court would no doubt require clear and convincing evidence of such a declaration of intention before it acts upon it. As regards the danger of perjured evidence and the heavy burden that will be thrown upon courts, I have only to state that courts are here to shoulder that burden as part of their duty. The machine is not to be put above the work it has to do. Oral wills (permitted in the mofussil till 1925) oral authorities to adopt oral partitions, oral surrenders or

releases, oral declarations of intention to divide and oral communications of such intention have had to be adjudicated upon by courts and my

conclusion in this case is not likely to add appreciably to the burden of the courts or the volume of tainted evidence. As pointed out by Sadasiva

Aiyar, J., in *Soundararajan v. Arunachalam* (1915) 29 M.L.J. 816 : ILR 39 Mad. 159, and my learnedly brother, Panchapagesa Sastri, J., in this

case, it is always open to the Legislature to enact that a declaration of intention to become divided by a member of a joint Hindu family should be

in writing and registered.

45. Assuming that communication of an intention to become divided on the part of a member of a joint Hindu family or a tarwad to the other

members is an essential condition of the doctrine of severance in status by an unilateral declaration, the further question that arises is, whether a

communication of such intention to the manager of a joint Hindu family or in the case of a tarwad, to the karnavan of the tarwad, is sufficient or

whether a communication to all the members of the family is necessary in order to effect a severance in status. There is no direct authority of the

point one way or the other. The decisions that refer to communication or intimation of an intention to divide on the part of a member of a joint

Hindu family assume in a general way that the communication is to be made or the intimation is to be given to the "" co-sharers "" i.e., coparceners.

But these observations are of a general character and must not be understood as decisive of the point now raised, one way or the other. The

manager of a joint Hindu family has the power or the right to represent the family in all transactions relating to it so far as the outside world is

concerned. He is entitled to act on behalf of the family without taking the consent of the other members. A manager can sue and be sued without

joining the other members of the family; in respect of family transaction the manager represents the entire family in such suits. The result of the

litigation would be binding on the members of the family, in the absence of fraud or collusion. The position of the karnavan of a Malabar tarwad is

similar and was thus described by Holloway, J. : ""A Malabar family speaks through its head, the karnavan"". The question, however, is whether this

power or right of representation enables the manager of a joint Hindu family or the karnavan of a Malabar tarwad to receive on his own behalf and

on behalf of all the members of the family a notice given by a outgoing member of his intention to become divided from the rest of the family. It is

open to one member of a joint Hindu family to separate himself from the rest leaving the latter to continue as before as members of the joint family.

If one coparcener dies or drops out, the corporate character of the family is not lost thereby. The true position is stated by the Judicial Committee

in *Palaniammal v. Muthu Venkatachala* (1924) 48 M.L.J. 83 : L.R. 52 IndAp 83 : ILR 48 Mad. 254 (P.C.), in these words,

It is now beyond doubt that a member of a joint family can separate himself from the other members of the joint family and is, on separation,

entitled to have his share in the property of the joint family ascertained and partitioned off from him, and that the remaining coparceners, without

any special agreement amongst themselves, may continue to be coparceners and to enjoy as members of a joint family, what remained after such a

partition, of the family property. That the remaining members continued to be joint may, if disputed, be inferred from the way in which their family

business was carried on....

If the remaining members continue as a joint family, the manager of the family would represent them in all transactions with the outside world,

including the outgoing member. It is not as if the manager or any of the remaining members of the family have any voice, veto or option in the

matter. All of them have to submit, willy-nilly, to the demand of a coparcener for the separation of his share, for, it is a matter of his own individual

volition. The notice or communication of an intention to become divided is only of evidentiary value, assuming of course that it is an indispensable

piece of evidence. If it were the law that the separation of one member ipso jure causes a separation of all the member of the family, on the analogy

of the death or retirement of a partner in a partnership, one can understand the necessity for a notice individually to all the remaining coparceners.

When that is not the case, I fail to see why a notice issued to the manager of the family who would continue to represent the remaining members of

the joint family is not a sufficient notice to the remaining members themselves. Quoad the joint family, the position of an outgoing member is like

that of a stranger and I do not see any reason why the manager of the family, acting on behalf of the remaining members and representing them,

should be disabled from receiving a notice of separation given by the outgoing member. There might be transactions between an individual member

of a joint family and the joint family itself represented by the manager. A member of a joint Hindu family can do business with, lend to or borrow

from the joint family represented by its manager. In *Bhum Mat v. Jagannath* (1943) 1 M.L.J. 70 : ILR (1942) Kar. (P.C.) 33 case which was

apparently not brought to the notice of my learned brethren, the Judicial Committee have gone to the length of holding that it is open to a

coparcener in his own individual capacity to enter into a contract of partnership with the joint family of which he is a member, the joint family being

represented by the manager. Such a transaction can be effected by the members of the family through the medium of the manager, the joint Hindu

family being regarded as entity capable of being represented by its manager. If so much is granted, I fail to see why an intimation or communication

of the intention of one member to divide, given to the person who would continue to be the manager of the joint family after the severance of the

outgoing member, is not sufficient notice to the remaining members who form the joint family.

46. The analogy of a suit for partition is not conclusive on this matter. In order to prevent a multiplicity of suits and give a finality to litigation, the

procedural law insists upon every member of the family entitled to a share in the family properties being made a party to a suit for partition and

also upon the inclusion of every item of family property. A suit for a division in status alone without a de facto division of the properties is

inconceivable. If there is to be a division by metes and bounds, then the wishes of all the sharers have to be consulted as regards the best method

of allotment of property consistent with the interests of all the sharers. A division in status depends upon the volition of the separating member,

while a division by metes and bounds requires the agreement of all the parties or the decree of a court.

47. I am glad to be fortified in my conclusion by the opinion of so eminent a lawyer as the editor of the latest edition of Mayne's Hindu Law

extracted in judgment of *Satyanarayana Rao*. J. My learned brother, *Panchapagesa Sastri*, J., has drawn attention to the fact that both in *Girja Bai*

v. Sadashiv Dhundiraj (1916) 31 M.L.J. 455 : L.R 43 IndAp 151 : 43 Cal. 1031 (P.C.) and *Ayinampudi Kotayya and Others Vs. Ayinampudi*

Krishna Rao by mother and guardian Ayinampudi Ammemma and Others, notice of the intention of an outgoing member to separate himself from

the family was given only to the managing member. I may also add that in the former case the manager was only a de. facto manager. As howeyer,

the present point was not raised or considered in those cases, I do not rely on them as binding precedents.

48. Out of the respect I entertain for the opinion of my learned brother Satyanarayana Rao, J., I have set put at some, but I hope not unnecessary

length, the considerations which have led me to form an opinion contrary to his own. For the reasons indicated in my judgment, I would answer the

question referred to me in the affirmative.

49. (The appeal was finally allowed)