
(1949) 03 MAD CK 0066

In the Madras High Court

Case No : Appeal Against Appellate Order No. 199 of 1946

Ediga Hanumanthappa and Another

APPELLANT

Vs

Eeranti Seethayya and Company

RESPONDENT

Date of Decision : 16-03-1949

Acts Referred:

Citation : (1949) 03 MAD CK 0066

Hon'ble Judges : P.V. Rajamannar, C.J; Viswanatha Sastri, J; Raghava Rao, J

Bench : Full Bench

Advocate : D. Narasaraju, for the Appellant; T.S. Narasinga Rao, for the Respondent

Judgement

P.V. Rajamannar, C.J.—The question referred for the decision of the Full Bench is:

When a decree is passed in favour of a firm, can payment outside Court to one partner-decree-holder bind the other partner-decree-holders?

2. Though the question is in general terms, it is necessary to state the facts of the case to understand the implications of the question. On 18th August 1942, the District Munsif of Anantapur passed a preliminary decree for sale in a suit on a mortgage in favour of the firm of Eeranti Seethayya & Co., against the two Defendants who are the Appellants before us. The firm was represented by its managing partner, Eeranti Seethayya. The final decree was duly made on 17th July 1943. On 12th October 1944, the execution petition (E.P. No. 467 of 1944) was filed by the decree-holder firm by its managing partner, Eeranti Seethayya, to recover a sum of Rs. 3,342-8-0, by sale of the mortgaged properties. While this application was pending, on 22nd March 1945, the judgment-debtors filed an application under Order XXI, Rule 2, Code of Civil Procedure, for recording full satisfaction of the decree, on the ground that they had paid Rs. 2,750 to one Tallam Suryanarayanappa, a partner of the decree-holder firm on 15th January 1945 in full satisfaction of the amount due under the decree and had obtained a receipt (Exhibit F-1) from him. The managing partner opposed the application on

two grounds: (i) that payment to one of the partners was not a valid payment, and (ii) that the judgment debtors and the other partner had colluded together and brought about the receipt fraudulently. The District Munsif of Anantapur held that the settlement alleged by the judgment-debtors was fraudulent and mala fide, and that the receipt granted by one of the joint decree-holders, that is, one of the partners, was not binding on the other partner who was executing the decree. He followed the decision of a Divisional Bench of this Court in *Muthusamy v. Narasimha* (1933) ILR 57 Mad. 696. On appeal, the learned District Judge of Anantapur confirmed the order of the District Munsif. He rested his decision on the point of law that one of the joint decree-holders, though they be partners, cannot give a valid discharge by receiving payment out of court without the concurrence of the other decree-holders. He also followed the ruling in *Muthusamy v. Narasimha* (1933) ILR 57 Mad. 696. He did not give a finding as to the bona fides of the alleged payment itself. The judgment-debtors filed a second appeal to this Court. When it came on for hearing before Clark J., he thought it was unnecessary to remand the case for a finding on the question of fact. He went into the evidence himself, and held that a sum of Rs. 2,750 was in fact paid by the judgment-debtors to one of the partners, namely, T. Suryanarayanappa. The only question, therefore, which remained for his decision was whether that payment was sufficient to discharge the judgment-debtors from their liability under the decree in favour of the firm. He found a conflict of authority on this question and, in view of the conflict, considered that the question may be referred for decision by a Full Bench.

3. Both the Courts below, the learned Judge here, and Counsel on either side before us, argued this question on the assumption that the decree in favour of the firm must, be deemed to be a joint decree in favour of the two partners of the firm, namely, Eeranti Seethayya and Tallam Suryanarayanappa. Actually, the name of the latter did not find a place in the decree or in the execution application, but it is common ground that he was at all material times a partner of the firm.

4. Before proceeding to discuss the conflicting decisions on this question, I shall refer to the statutory provisions which have a bearing on the question. Under Order XXI, Rule 1, Sub-rule 1, all money payable under a decree shall be paid as follows, namely:

- (a) into the Court whose duty it is to execute the decree; or
- (b) out of Court to the decree-holder; or
- (c) otherwise as the Court which made the decree directs.

Rule 2, Sub-rule 1, runs thus:

Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court

whose duty it is to execute the decree, and the Court shall record the same accordingly.

5. Though it may not appear to have a direct application, the following provision, namely, Rule 15 of the same Order has been considered as having great relevancy. That Rule is in these terms:

(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all or where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this Rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

6. There is one section of the Limitation Act which, to my mind, does throw considerable light on the point in issue, and that is Section 7 of the present Act of 1908. Section 7 enacts:

Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

7. Two illustrations are appended to this section, which are interesting. It may be mentioned here that the corresponding section of the Indian Limitation Act of 1877 (Act XV of 1877), namely, Section 8, ran as follows:

When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all; but where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

8. Money due under a decree can be paid out of Court to the decree-holder, who presumably can give a valid discharge. Only Rule 2 insists that such payment shall be certified and recorded. Obviously, a payment to an authorised agent of the decree-holder, that is a person authorised by the decree-holder to receive the decree amount and give a discharge, would also be a payment to the decree-holder. When there are two or more decree-holders and the decree is passed jointly in favour of them all, then obviously, payment must be to all of them, because the word "decree-holder" must mean "decree-holders" when there is a plurality of decree-holders. It follows that when there are two or more decree-holders, a payment to one of them cannot be a valid payment under Rule 1 of

Order XXI, which can be certified or recorded under Rule 2. This is, of course, subject to the qualification that if one of two or more decree-holders happens to be also the authorised agent of the other decree-holder or decree-holders, then he can give a valid discharge on behalf of himself and the others. So far, there appears to be no occasion for controversy. But what is contended for by the Respondents and controverted by the Appellants is that the agency empowering one of the decree-holders to accept a payment and give a discharge on behalf of the other decree-holders must be an agency created after the decree, unless the decree itself recognises such agency. The question, therefore, narrows itself down to this, namely, whether the agency should be special and post-decretal, or whether the agency could be general and existing even before the passing of the decree, though certainly it should be subsisting at the time of the payment and discharge.

9. Taking the case of partners, which is the case on hand, Section 18 of the Partnership Act declares what has always been understood as a principle of universal application that a partner is the agent of the firm for the purposes of the business of the firm. The implied authority of every partner to bind the firm by any act of his done to carry on in the usual way the business of the firm, is subject to other provisions of the Act, limiting such power. It has never been doubted that ordinarily one of the partners of firm can receive a debt due to the firm and the payment to him would be a valid discharge of the debt, binding on the entire firm. The question is whether there is any principle, either expressly laid in, or necessarily to be implied from, any enactment, which overrides and puts an end to this implied agency of a partner. Any express provision to that effect I have been unable to discover. But it is contended that this limitation on the power of a partner as an agent of the firm necessarily flows from the provisions of Order XXI, Rule 1(1)(b) and Rule 15. On the other hand, it is urged by the Appellants that logically there is no impediment to applying the general law of partnership, under which one partner is the agent of the other partners even to rights declared by a decree of Court. A partner is not expressly prohibited from receiving money due under a decree to the firm out of Court, nor is it stated that such a payment would not bind the other partners. If the decree-holder is the firm composed of the several partners, then payment to one of them would be in law a payment to the firm. If one of the partners could have given a discharge by accepting payment in respect of the claim which is the subject-matter of the suit before the decree, it does not stand to reason--so the argument ran--that he cannot do so once a decree is passed. As the several aspects of the question find support in one or other of the decisions cited to us, I shall now deal with them chronologically.

10. The earliest of the cases, *Sultan Mohideen v. Saralammal* (1892) ILR 15 Mad. 343, is not of much help. There, one of two decree-holders applied for execution of the decree to the full amount. It appeared that the other decree-holder had received a certain sum from the judgment-debtor, but the payment had not been certified. It was held that the payment was valid only to the extent

of the share to which the payee was entitled, and the Court directed that the share due to the payee should be ascertained and credit given for it, and the decree should be executed in favour of the applicant for the balance. The learned Judges gave this direction for the purpose of determining what order should be passed u/s 231 (corresponding to Order XXI, Rule 15, of the present Code).

11. In *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.), the facts were as follows:--On 30th June 1892, a joint decree was passed in favour of three brothers, who at the date of the decree were all minors. On 5th January 1896, an application for execution was made. On that date, two of the brothers had attained majority, but one was still a minor. On 25th February 1899, the next application for execution was presented, by which time the youngest of the brothers also had attained majority, but three years had not elapsed from the date on which he had attained majority. It was held by the Full Bench that the application was barred by limitation, and the joint decree was no longer executable even in respect of the interest of the youngest of the decree-holders. Reliance was placed for the decree-holders on Section 8 of the Limitation Act then in force, but the learned Judges decided that joint decree-holders were not "joint creditors" within the meaning of that section. There is nothing in the judgment of Sir Arnold White C.J., which is material for the purpose of this case. It was in this judgment that Davies, Benson and Moore JJ. concurred. Bhashyam Ayyanger J. delivered a separate judgment, in which he held that if the last preceding application for execution was made in accordance with law, the application before the Court, whether regarded as one made by all three joint decree-holders or by the youngest brother alone for the benefit of all, or for his share, was barred by limitation. In the course of his judgment, he made certain observations in discussing the point whether joint decree-holders were joint creditors within the meaning of Section 8. In his opinion if joint decree-holders could be considered to be joint creditors within the meaning of that section, it would follow that the execution application of 1899 was not barred because.

no discharge of the decree could validly be given either by the senior of the major brothers or by both without the concurrence of the youngest.

12. As the observations he made in this connection have been the foundation of some of the later decisions, it is useful to extract them:

A payment made out of Court only to one of several joint decree-holders cannot bind the others unless he was also constituted, by them, as an agent for the purpose, in which case alone the payment can be recorded as certified u/s 258, Code of Civil Procedure. But payment to one or some of several joint decree-holders cannot operate as a discharge of the decree-debt, nor be recorded as certified u/s 258, Code of Civil Procedure, unless, of course, such person or persons were duly authorized by the others to accept such payment in entire or partial satisfaction of the decree.

13. Referring to the position of the managing member of an undivided Hindu

family as a joint decree-holder, the learned Judge said:

The mere fact that one of the joint decree-holders is the managing member of an undivided Hindu family consisting of the joint decree-holders will not empower him to give a valid discharge of the decree debt, without the concurrence of the remaining members, any more than it will empower him to execute the whole decree, as of right, without the concurrence of the remaining decree-holders.

14. From an analysis of the observations of the learned Judge on this point, only two reasons emerge to support his conclusion: First that the expression "decree-holder" will include also the plural, "decree-holders", and if the decree be in favour of two or more persons as joint decree-holders, the amount should be paid to all of them. If the learned Judge meant that one decree-holder as such could not give a discharge on behalf of all the decree-holders the Rule is axiomatic and can admit of no argument. But he surely did not mean that in no case could one of several joint decree-holders give a valid discharge, when there were two or more decree-holders. He himself points out that a payment to one only would bind the others, if he was constituted by them as an agent for the purpose. The question, therefore, still remains whether this constitution of one of the joint decree-holders as an agent should be for the special purpose of giving a discharge of the decree debt, or if such constitution could be the result flowing from the general or personal law applicable to the parties. Second, that u/s 231, Code of Civil Procedure(corresponding to Order XXI, Rule 15), one of the joint decree-holders cannot execute the whole decree as of right, without the concurrence of the remaining decree-holders, and he has to obtain permission from the Court to execute the whole decree, and the Court may, if it sees sufficient cause, allow him to so execute the whole decree, and in that case the Court should pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application. In drawing any inference from this section, it is important to bear in mind three things: namely, that it is a procedural provision, it is enabling in its character, and it is general in its application. As a matter of procedure, it lays down that when there is a decree passed in favour of two or more persons, in special circumstances, one of them alone can be permitted to execute the decree, the ordinary Rule being that all of them should join in executing it. It does not profess to affect the substantive rights of parties under the general law, and it neither expressly nor impliedly says anything about what may happen outside Court and without its intervention. Next, it is clearly an enabling section. It does not prohibit any act. For the sake of convenience, when there is a plurality of decree-holders, it permits one of them to execute the decree with the leave of the Court. It does not prohibit the judgment-debtor from paying money due under the decree out of Court. It does not declare to whom it should be paid out of Court. Nor does it declare the effect of a payment by the judgment-debtor to one of several decree-holders. Finally, it applies to all kinds of joint decrees, such as for instance decrees passed in favour of several decree-holders who may be tenants-in-common owning undivided shares in property, between whom inter se there is no

kind of relationship of agency and where one of them has no special representative capacity. It may be that in such cases the Court, when it allows one of them to execute the whole decree, passes such order as it deems necessary to protect the interests of the other decree-holders. I am ready to confess that I have considerable doubt as to the application of this Rule (Order XXI, Rule 15) to the case of a decree passed in favour of a firm. Taking the case now before us as an instance, what we find is that there is a decree passed in favour of Eeranti Seethayya & Co., represented by its managing partner, Eeranti Seethayya. The name of the other partner does not appear on the face of the decree. The execution petition was filed by Eeranti Seethayya alone as the managing partner of the firm, and it has been signed only by him. In the petition, there is no mention of the name of the other partner. There was no order obtained under Order XXI, Rule 15. Under Order XXX, Rule 1(2), where persons sue or are sued as partners in the name of their firm, it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the Plaintiff, or the Defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons. I do not see anything which prevents the same Rule obtaining in the case of execution applications. I do not find anything in the Code or in the Civil Rules of Practice to compel an execution application on behalf of a firm as decree-holder to be signed and verified by all the partners. Where a decree has been passed against a firm, execution may be granted, under Order XXI, Rule 50, not only against the property of the partnership, but against any person who has admitted on the pleading or who has been adjudged to be a partner, and a decree-holder is also entitled to cause the decree to be executed against any person not mentioned in the decree as a partner, alleging that he is a partner, and where the liability is disputed, the issue can even be tried in a manner in which any issue in a suit can be tried and determined. But, even assuming that Order XXI, Rule 15, of the Code applies to the case" of a decree obtained by a firm, it does not, in my opinion, directly or indirectly affect, enlarge or abridge the rights and obligations of the partners inter se or in their relation to third parties according to the general law applicable to them.

15. There is another aspect of the matter adverted to by Bhashyam Ayyanger J. which must not be overlooked. According to him, Section 8 of the Limitation Act then in force could not apply to the case of joint decree-holders, because one of several persons entitled jointly to make an application for execution could not, without the concurrence of others, give a valid discharge binding upon all in respect of the matter of the application; though it may be that according to the general law or the personal law governing them, one of several joint creditors or claimants might give a discharge binding upon the others. Now, subsequent to this decision which was in 1902, there has been a change in the section corresponding to Section 8 of the Limitation Act of 1877. Section 7 of the present Act which replaces Section 8 of the Act of 1877 expressly makes it applicable to the case of an application for the execution of a decree in favour of several

persons, and to the contingency of a discharge being given by one on behalf of the other decree-holders, without the concurrence of such persons. The two illustrations which were appended to the old Section 8 have been reproduced without any alteration. This statutory provision, to my mind, appears to directly overrule the opinion expressed by Bhashyam Ayyangar J. that in no case could one decree-holder, without the concurrence of the others, give a valid discharge binding upon all.

16. The next case, *Duraiswami Sastrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088, arose u/s 7 of the Limitation Act of 1908. Sundara Ayyar and Phillips JJ. held that the managing member of a Hindu joint family was competent to give a valid discharge of a decree-debt due to the family, within the meaning of that section. In that case, a decree was passed in favour of two persons who were members of a joint Hindu family, of whom the first Plaintiff was the managing member. The learned Judges pointed to the alteration in the statute of limitation and stated that it contemplated the existence of cases where one of several decree-holders could give a discharge without the concurrence of the others. The learned Judges expressly dissented from the observations of Bhashyam Ayyangar J. in *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.) in these terms:

If the learned Judge really meant to lay down that the provisions of Section 257 should be construed without reference to the substantive Law of the parties in deciding whether one of them is entitled to receive monies for which a decree is passed in favour of a joint Hindu family, then, with all deference, we are unable to concur with him.

17. The learned Judges also pointed out that the language of Section 257 of the old Code is only permissive and does not expressly prohibit the payment to an agent or to one having the power of an agent under the law of the parties. Their following remarks on the scope of Order XXI, Rule 15, are also relevant:

It is no doubt open to the Court, where the manager is obliged to seek its help for realising a decree by process of execution, to direct security to be given for protecting the interests of other members when it sees reasons for doing so but this cannot deprive him of the right to receive the money himself if he can do so without the assistance of the Court.

No doubt, the learned Judges gave as an additional reason in support of their conclusion that it had been held by a Division Bench that a managing member would have a right to compromise a suit without the consent of the Court where minor members of the family are parties to the litigation and are represented by the managing member as their guardian. The reference is to the decision in *Ganesha Row v. Tuljaram Row* (1908) 19 M.L.J. 4. This decision of the High Court was, however, reversed by the Privy Council in *Ganesh Rao v. Tuljaram Row* (1913) ILR 36 Mad. 295 (P.C.). But I agree with the learned Judges who decided *Krishna Hande v. Padmanabha Hande* (1913) 25 M.L.J. 442 that the reversal of the decision of this Court on that point does not affect the correctness of the

conclusion in *Duraiswami Sastrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088. *Tuljaram Rao's case* (1913) ILR 36 Mad. 295 (P.C.) was decided on the express provision of Order XXXII, Rule 7, which prohibits a next friend or guardian of a minor from entering into any agreement or compromise on behalf of a minor, without leave of the Court. The manager of a joint Hindu family, once he accepts the position of a next friend or guardian for a minor coparcener, to that extent, must be deemed to have himself surrendered his right under general law as manager of the family. There is no such express provision when the manager is not also the next friend or guardian of any of the minor coparceners. Then, the prohibition will not stand in the way, and he will be entitled to exercise his powers under the general and personal law. That this is so in spite of the ruling of the Privy Council in *Ganesha Rao v. Tuljaram Row* (1913) ILR 36 Mad. 295 (P.C.) is clear from a decision of a Bench of this Court in *Ramalingam Chetty v. Radhakrishnan Chettiar* (1935) 70 M.L.J. 700. It was there held that the provisions of Order XXXII, Rules 6 and 7, did not restrict in any way the powers of a father or a manager in a joint Hindu family to receive the amount of a decree and to give a discharge so as to bind a minor member of his family also, who is a party to the suit, without obtaining the leave of the Court, in cases where such father or managing member is not the next friend of the minor, because there is no provision statutory or otherwise, imposing such a restriction.

18. The next decision in order of date is that in *Mahomed Silar Sahib v. Nabi Khan Sahib* (1916) 31 M.L.J. 93, which sounded a note opposed to that of *Duraiswami Sastrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088 and *Krishna Hande v. Padmanabha Hande* (1913) 25 M.L.J. 442. In this case the learned Judges, Oldfield and Sadasiva Ayyab JJ. held that where three partners held a joint decree, a payment out of Court of the decree amount to two of them cannot bind the third wholly or in part, unless they had been constituted by him agents for the receipt of the decree amount. Oldfield J. contented himself with accepting the statement of the law by Bhashyam Ayyangar J. in *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.). Sadasiva Ayyar J. dealt with the question at greater length. He said:

The right of two out of three partners to receive on behalf of the partnership a partnership debt which has not merged into a decree so as to bind the third partner has no bearing on the decision of the question whether when the three partners have become joint decree-holders (and are not merely joint private creditors) two of them as such decree-holders can receive the joint decree debt so as to release the judgment-debtor from liability in execution for even a portion of the decree debt. Bhashyam Ayyangar J.'s judgment in *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.), in my opinion, establishes that one of several joint decree-holders cannot receive his alleged share of the decree debt so as to enable the judgment-debtor to put forward a claim to enter up satisfaction of that portion of the decree unless the payee had been appointed by all the other decree-holders as their agent. The status as such agent must either appear expressly in the decree or should be expressly created after the passing

of the decree and cannot merely be inferred from the position of the payee as managing member of the joint Hindu family of the decree-holders or as one of several partners decree-holders. See also *Lachman Das v. Chaturbhuj Das* (1905) ILR 28 All. 252.

With great respect to the learned Judge, I find no additional and convincing reason in his judgment, apart from the reasons contained in *Bhashyam Ayyangar J'S* judgment. I fail to see the logic of the rule that the status as agent must either appear expressly in the decree or should be expressly created after the passing of the decree. I also fail to see why the right of two out of three partners to receive a partnership debt which has not merged into a decree so as to bind the third partner has no bearing on the question whether in respect of the same debt two of them as decree-holders can receive the joint decree debt so as to release the judgment-debtor from liability.

19. *Sadasiva Ayyak, J.* referred to the decision in *Lachman Das v. Chaturbhuj Das* (1905) ILR 28 All. 252. In that case, *Banerjee and Richards JJ.* held that one out of several joint decree-holders was not competent to give a valid discharge for the amount of the joint decree, and his position in this respect was not affected by the fact that he and his fellow decree-holders were co-executors. The conclusion at which the learned Judges arrived appears to me to be entirely based upon their inference from the provisions of Section 231 of the old Code, because they say:

Under Section 231 one of several decree-holders may apply for execution for the benefit of all the decree-holders. The inference from the provisions of this section is irresistible that one of several decree-holders cannot give a full discharge for the amount of the decree.

20. I am unable to discover any such irresistible inference. Moreover, that case depended upon the provisions of Section 92 of the Probate and Administration Act, under which one of several executors had power to release a debt due to the deceased. It is doubtful whether this can have a direct bearing on the question before us which is a case of payment.

21. In *Thimma Reddy v. Subba Reddiyar* 1918 M.W.N. 507 *Sadasiva Ayyar*, and *Napier JJ.* applied the decision in *Mahomed Silar Sahib v. Nabi Khan Sahib* (1916) 31 M.L.J. 93 to a case of a certification under Order XXI, Rule 2, by two out of four decree-holders. In that case, the payment was to all the four partners, but two of the partners alone certified the payment to Courts. On this ground, the learned Judges held that the decree must be deemed to be alive in favour of all the decree-holders so far as the executing Court was concerned, though the decree had been discharged except in the eye of an executing Court. Actually, however, the application for execution by a transferee from the two partners who had not certified, was held to be not maintainable and dismissed, and if I may say so, eventually justice was done. This decision does not carry the matter further, nor does the decision of *Wallace J.* in *Pitchakkuttiya Pillai v. Doraiswami*

Mooppanar (1924) 47 M.L.J. 498. In that case, a decree had been passed jointly in favour of the manager of a joint Hindu family and certain minor coparceners represented by the manager as next friend, and it was held that a payment to the manager cannot be recognized, unless leave of the Court had been obtained under Order XXXII, Rule 6, Code of Civil Procedure. The case directly fell within the ruling of the Judicial Committee in Ganesh Row v. Tuljaram Row (1913) ILR 36 Mad. 295 (P.C.). The learned Judge however was also prepared to follow the view of the law enunciated in Mahomed Silar Sahib v. Nabi Khan Sahib (1916) 31 M.L.J. 93.

22. It is not without significance that in none of the decisions beginning from Mahomed Silar Sahib v. Nabi Khan Sahib (1916) 31 M.L.J. 93 was any reference made to the decisions in Duraiswami Sastrial v. Venkatarama Iyer (1911) 21 M.L.J. 1088 and Krishna Hande v. Padmanabha Hande (1913) 25 M.L.J. 442.

23. Then, we finally come to Muthusamy v. Narasimha (1933) ILR 57 Mad. 696 decided by Sundaram Chetti and Pakenham Walsh JJ. The facts of that case are practically identical with the facts of the case before us. The decree was obtained in the name of the firm represented by the managing partner. Subsequent to the decree, a brother of the managing partner, who was another partner, received a sum of Rs. 2,100 in full satisfaction of the decree, and put in a memorandum into Court to record satisfaction. The question was whether by reason of the payment a valid discharge of the decree debt had been given so as to bind the other partners of the firm. The learned Judges held that it had not been. Sundaram Chetti J. who delivered the judgment of the Bench, discussed many of the decisions cited before us. But, curiously, the decision in Duraiswami Sastrial v. Venkataraman Iyer (1911) 21 M.L.J. 1088 and Krishna Hande v. Padmanabha Hande (1913) 25 M.L.J. 442 were not referred to. We cannot presume that they were cited. The learned Judge starts with assuming that a decree in the name of a firm is a decree passed generally in favour of all the partners jointly even for the purpose of Order XXI, Rule 15, Code of Civil Procedure. As I have already indicated, I have my doubts on this point. When the Code recognises a suit being filed in the name of the firm and therefore a decree being passed in the name of the firm, I fail to see why such a decree could not also be executed in the name of the firm and an application for execution signed by one of the partners. The learned Judge repeats the two reasons found in the observations of Bhashyam Ayyangar J. in Periasami v. Krishna Ayyan (1902) ILR 25 Mad. 431 (F.B.), namely, that the "decree-holder" includes "decree-holders", and under Order XXI, Rule 15, one of the joint decree-holders cannot, as a matter of right, execute the whole decree. I have discussed these two reasons above, and I am of opinion that neither leads to the conclusion that a payment made to one of the partners of a firm in whose favour a decree is passed, out of Court, does not bind the other partners. The learned Judge, at page 701, concedes that a payment to one of the partners may, under the general law relating to partnership, be valid and binding on the firm. But that circumstance, according to him, is not enough to validate the payment made to one of them as against the other decree-

holders, because of the principles of the decision of the Privy Council in *Ganesha Row v. Tuljaram, Row* (1913) ILR 36 Mad. 295 (P.C.), With great respect to the learned Judge, I must say that their Lordships of the Judicial Committee decided that case on the express provisions of Order XXXII, Rule 7. They held that a managing member or father could not do any act in his capacity as managing member or father, which he is debarred from doing as next friend or guardian without leave of the Court. To hold otherwise would be to defeat the object of the enactment. I find nothing in Order XXI, Rule 1 or 2 or 15, which has even a remote similarity to the mandatory prohibition contained in Order XXXII, Rule 7. I am clearly of opinion that the ruling of the Privy Council in *Ganesha Row v. Tuljaram Row* (1913) ILR 36 Mad. 295 (P.C.) has no bearing on the question which falls for consideration in the case before us. The learned Judge followed the decision in *Mahomed Silar Sahib v. Nabi Khan Sahib* (1916) 31 M.L.J. 93 and *Lachman Das v. Chaturbhuj Das* (1905) ILR 28 All. 252, which I have already discussed supra.

24. It cannot be disputed that, if payment of the decree amount is made out of Court to a sole decree-holder or several joint decree-holders, it is that payment which will operate as a sufficient discharge of the debt and it is not the act of the Court in recording such payment as certified that operates as a discharge. The Court only records satisfaction of the decree; vide *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431, 441 (F.B.), per *Bhashyam Ayyangar J.* So, in my opinion, the legal effect of a payment out of Court to one of the partners of a firm must be determined by the general and personal law applicable to the parties. If before the passing of the decree one of the partners, by receiving payment of the debt which is the subject-matter of the suit, can give a valid discharge binding on the other partners of the firm, logically, I fail to see why he cannot do so after the passing of the decree. The debt no doubt has merged into the decree, but even thereafter it continues to be a debt. No doubt, for the recovery of the debt, the machinery of the Court is also available after the decree. But that fact cannot destroy or prejudice the rights and liabilities of the partners inter se, and in relation to third parties. It has been said in some of the decisions that the agency under the general law is not enough it must be a special agency created subsequent to the decree for the purpose of receiving the decree amount on behalf of all, or an agency expressly declared in the decree itself. It is not clear why the agency should be created subsequent to the decree. Take, for instance, a case in which, before the passing of a decree, the partners of the firm had executed a power-of-attorney in favour of a person empowering him to recover moneys due to the firm under decrees of Court. Can it be contended reasonably that even in such a case the person holding such a power-of-attorney cannot receive payment of the decree amount on behalf of all? If it is sufficient that the agency is expressly declared in the decree itself, I am prepared to hold that the fact that the decree is expressed to be in favour of a firm amounts to a declaration that each partner is an agent of the other partners. One can realise that, when the decree is merely in favour of two or more decree-

holders without anything more appearing on its face, it is necessary to insist upon proof of special agency conferring the right to receive the decree amount on one of them. But when on the face of the decree it appears that the decree is in favour of the firm, that is, in favour of all the partners as such, I think it is reasonable to imply that the decree itself declares the rights which the partners would have under the general law.

25. After a consideration of the several decisions cited before us and the points which have been urged before us on either side, I have arrived at the conclusion that the answer to the question referred to the Full Bench, namely,

When a decree is passed in favour of a firm, can payment outside Court to one partner-decree-holder bind the other partner-decree-holders?

must be in the affirmative, provided that the other partner-decree-holders would be at liberty to establish special circumstances why such a payment should not bind them.

Viswanatha Sastri, J.

26. The short point that arises for decision in this case is whether a payment of money due under a decree passed in favour of a firm to one of the partners of the firm is a valid discharge of the debtor's liability. In other words, is the payment binding on the other partners? An imposing array of cases has been presented to us to show that this Court has answered the question in the negative. The cases are: Periasami v. Krishna Ayyan (1902) ILR 25 Mad. 431 (F.B.), Mahomed Silar Sahib v. Nabi Khan Sahib (1916) 31 M.L.J. 93, Thimma Reddy v. Subba Reddiyar 1918 M.W.N. 509, Pitchakkuttiya Pillai v. Doraiswami Mooppanar (1924) 47 M.L.J. 498, Rm. Ar. Ar. Rm. Arunachala Chettiar and Another Vs. Virappa Chettiar and Others, and Muthusamy v. Narasimha (1933) ILR 57 Mad. 696. The reasons for this conclusion are contained in the judgment of Bhashyam Ayyangar J. in the first of the cases above referred to and the subsequent decisions have merely purported to follow the reasoning and conclusion of that learned Judge.

27. A part from precedents, how does the matter stand on principle and the statute law? When several persons enter into a partnership, each individual partner constitutes the others his agents for the purpose of entering into contracts and transactions for him within the scope of the partnership concern and is liable on such contracts and transactions as if entered into personally by himself. The fundamental idea is that partners when carrying on the business of the firm are agents as well as principals. The definition of "partnership" in Section 4 of the Indian Partnership Act (IX of 1932) is an epigrammatic statement of this established Rule. Section 19(1) of the same Act lays down that the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. Persons who have entered into partnership with one another are collectively called "a firm." If a firm lends out money it is open to a partner to receive payment in due course from the debtors

of the firm and to give discharge so as to bind all the partners. Indeed, the Madras High Court has gone so far as to hold that it is open to any one of two or more joint creditors to receive payment of a debt (other than a decree debt) so as to bind the other creditors and give a valid discharge to the debtor apart from any question of agency; *Barber Maran v. Bamanna Goundan* (1897) ILR 20 Mad. 461, *Annapurnamma v. Akkayya* (1912) ILR 36 Mad. 544 (F.B.) and *Burnt v. Rashidh-uddhin Quraishi* (1934) 40 L.W. 595. This view has no doubt been dissented from by some of the other High Courts and it is unnecessary to canvass its soundness for the purposes of this case. Suffice it to say that if the debt in the present case had not been a decree debt but an ordinary partnership debt, payment to one of the partners would be binding on the other partners and would operate as a discharge of the debtor's liability according to the view of all the High Courts.

28. Does the interposition of a decree make any difference? In other words, is there anything in the CPC to preclude the applicability of the substantive law of agency and partnership as above stated to the realisation and discharge of decree debts? It must be conceded that there are instances where Rules of substantive law have been superseded by the specific and express provisions of the Code of Civil Procedure. Where, for instance, the manager of a joint Hindu family comprising minor coparceners or the father of minor sons in a joint family, is appointed guardian ad litem for the minor members in a suit, the powers of the manager or the father under the Hindu law are controlled by the provisions of Order XXXII, Rule 7, of the CPC and he cannot, without the leave of the Court, enter into any agreement or compromise on behalf of the minors with reference to the suit and such an agreement or compromise would not be binding on the minors even if it was a bona fide settlement of a disputed claim and would have been quite within the authority of the manager or the father, if there had been no suit in which he functioned as the guardian ad litem of the minors; see *Ganesha Row v. Tuljaram Bow* (1913) ILR 36 Mad. 295 (P.C.) and *Jamna Bai v. Vasanta Rao* (1916) ILR 39 Mad. 409 (P.C.). But the powers of the father or manager under the Hindu law would remain unaffected if he had not been appointed guardian ad litem for the minor members in the suit and he could receive payment and give a discharge of a decree debt so as to bind the minor members unaffected by the provisions of Order XXXII, Rule 6; see *Ramalingam Chetty v. Badhakrishna Chettiar* (1935) 70 M.L.J. 700. Similarly Section 66 of the CPC hits at benami purchases at execution sales by erecting a statutory bar to the maintainability of suits filed on such benami title. Are there any similar provisions in the CPC qualifying or displacing the substantive law of agency and partnership with reference to the realisation and discharge of decree debts? There is no such positive or express mandate as is found in Order XXXII, Rules 6 and 7, of the CPC with reference to an agreement or compromise by a guardian ad litem or the receipt of money or other property by the said guardian.

29. It is said, however, that the effect of Order XXI, Rules 1, 2 and 15 of the Code of Civil Procedure, either singly or in combination, is to override the

substantive law regulating the relations of partners and to disable one of the partners of the firm from receiving a decree debt due to the firm and giving a valid discharge to the debtor. Order XXI, Rule 1, directs that all money payable under a decree shall be paid as follows:

- (a) into the Court whose duty it is to execute the decree,
- (6) out of Court to the decree-holder, or
- (c) otherwise as the Court which made the decree directs.

By virtue of Section 13, Clause 2, of the General Clauses Act, words in the singular shall include the plural. Therefore, the term "decree-holder" in Order XXI, Rule 1, Clause 6, means "decree-holders" if there are two or more of them. Similarly, in Order XXI, Rule 2, Clause 1, which speaks of a payment out of Court or adjustment to the satisfaction of the decree-holder, the expression "decree-holder" means "decree-holders" if there are two or more of them. It may readily be granted that where a joint decree is passed in favour of two or more persons, not related as partners, a payment out of Court, in order to be binding on all, must be made to all the joint decree-holders and that one of several joint decree-holders cannot give a valid discharge of the entire decree without the concurrence of the others. The cases cited at the beginning of this judgment are sufficient authority for the above proposition. Order XXJ, Rule 15, Code of Civil Procedure, is a permissive or enabling provision which empowers the Court to execute a decree at the instance of one of the several decree-holders safeguarding the interests of the others in a suitable manner. This Rule recognises that even apart from any question of agency, express or implied, one of several decree-holders can execute the whole decree for the benefit of all. I do not see how the provision in Order XXI, Rule 15, relating to the execution of a joint decree by the Court at the instance of one of the decree-holders concludes the matter now under discussion. It is no doubt the Court's duty where a partner-decree-holder seeks its assistance for realising a decree by the process of execution to direct security to be given for protecting the interests of the other decree-holders, but this cannot, in my opinion, deprive a partner-decree-holder of his right to receive the money outside Court, if it is paid, and to grant a discharge.

30. In my opinion, there is nothing in the language of Order XXI, Rules 1 and 2, or Rule 15, to preclude a decree-holder or decree-holders from receiving payment outside Court through an agent. Let me take a simple case. Suppose all the decree-holders empower one of their number to receive payment of the decree amount and the judgment-debtor pays the decree debt to him who is so authorised to receive it. Can it be denied that there is a discharge or satisfaction of the decree in such a case? Does not the law of agency come into play and decide the rights of parties? Again suppose there is a decree in favour of a money lender A who carries on his business through an agent empowered by a power-of-attorney to realise either amicably or by the process of execution, all

debts due to A and the judgment-debtor pays a decree debt to A's agent. Is it not as good as a payment to the decree-holder A himself and is not the Court bound to record satisfaction if the payment is true? The answer can only be in the affirmative. In my opinion, it makes not the slightest difference whether the authority was given to the agent before or after the decree was obtained by A, and I must express my very respectful dissent from the following passage in the judgment of Sadasiva Ayyae J. in *Mahomed Silar Sahib v. Nabi Khan Sahib* (1916) 31 M.L.J. 93, quoted with approval in *Muthusamy v. Narasimha* (1933) ILR 57 Mad. 696. The passage runs as follows:

The status as agent must either appear expressly in the decree or should be expressly created after the passing of the decree.

31. In the converse case of a decree in favour of an agent as such, it is open to the principal always to step in and execute the decree or realise the decree amount out of Court by virtue of the relationship between him and the agent decree-holder. Assuming that a decree passed in favour of a firm without specifying the partners is a decree in favour of the partners, as joint decree-holders--a point on which I share the doubts expressed by my Lord--it cannot be said that the partners cease to hold a debt due to the firm as a partnership asset the moment a decree is passed for its recovery. Is it to be said that the moment that decree is passed for a debt due to the partnership, the relationship of the partners quoad the decree debt ceases and they become mere joint creditors entitled to the decree amount in such specific shares as they would be entitled to in the assets of the firm on a dissolution? It may be that on a dissolution, this asset, if it continues to exist as a decree, may have to be allotted to one of the partners as part of his share of the assets and that nothing is due to the other partners by reason of their over drawings. This aspect of the matter has been referred to and relied upon by Sadasiva Aiyar J. in *Mahomed Silar Sahib v. Nabi Khan Sahib* (1916) 31 M.L.J. 93 to support a view contrary to that I am inclined to take. Says the learned Judge:

I am very doubtful whether two out of three partners can in their individual capacities legally claim definite shares in a particular decree debt belonging to themselves and the other partners, jointly, such a decree debt being only one asset out of the numerous partnership assets. I think that they cannot make such a claim to own separate shares in a particular asset, any more than a member of a joint Hindu family can claim to receive in his individual capacity (or give a valid discharge for) his share of a particular debt due by one of the debtors of the joint Hindu family which possesses numerous other assets. Neither a partner nor a member of a joint Hindu family can claim and receive a definite share in a particular partnership debt or family debt as the case may be.

32. If this reasoning is correct, the decree-debt continues to be an asset of the partnership like an ordinary debt and is not isolated and separated from the rest of the partnership assets. With the utmost respect, I cannot see why the passing of a decree for a debt due to a partnership should effect such a vital or radical

change in the relationship of the partners quoad that particular asset and sterilise the powers which each of them had to realise the debt for the benefit of the partnership. Nor can I see any compelling reason for construing Order XXI, Rules 1 and 2, of the CPC as abrogating pro tanto or overriding the substantive law of partnership and agency.

33. The enactment of Section 7 of the Limitation Act is a legislative recognition of the view that under the substantive law, one joint decree-holder might give a valid discharge of the entire decree. The section postulates that a co-decree-holder in addition to his capacity as a co-decree-holder can have such a legal capacity under the general law as would empower him alone to realise the decree debt and give a discharge without executing the decree, even if the other joint decree-holder or decree-holders had been under no disability and had the requisite capacity to give their assent or concurrence. The most common instance of such legal capacity is to be found in the manager of a joint Hindu family or a partner in a firm as shown by the illustrations to the old Section 8 of the Limitation Act of 1877 which have been retained in the corresponding Section 7 of the Limitation Act of 1908, though the illustrations are, as pointed out by my Lord during the course of the arguments, somewhat unhappy. I consider that that part of the reasoning of Bhashyam Ayyangar J. in *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.) based on Section 8 of the Limitation Act of 1877 is no longer of value in view of the enactment of Section 7 of the Limitation Act of 1908.

34. It follows from the above reasoning that the decisions in *Mahomed Silar Sahib v. Nabi Khan Sahib* (1916) 31 M.L.J. 93 and *Muthusamy v. Narasimha* (1933) ILR 57 Mad. 696 must be over ruled. The decision in *Lachman Das v. Chaturbhuj Das* (1905) ILR 28 All. 252 to the effect that one of several executors, though empowered by Section 92 of the Probate and Administration Act (then in force) to give a discharge of a debt due to the deceased, loses his statutory power when the debt gets merged in a decree in favour of all the executors is one from which I respectfully dissent. The CPC primarily regulates procedure and in my opinion, there is no justification for extending the scope of Order XXI, Rules 1, 2 and 15, by a process of judicial interpretation so as to make serious inroads on substantive law and exclude a just defence of the judgment-debtor.

35. I have not dealt with the situation that would arise if the alleged payment to a partner-decree-holder is a fictitious, fraudulent or collusive arrangement intended to defraud the other partners-decree-holders or if the firm had become dissolved and the authority of the partner to receive payment of the decree debt on behalf of all the partners, had been terminated to the knowledge of the judgment-debtor at the time of the payment. The present case has proceeded on the assumption that there was a continuing or running partnership and the payment was bona fide made by the debtor to one of the partners-decree-holders.

36. After I prepared my opinion, I have had the advantage of reading the lucid and comprehensive judgment just delivered. No less, however, than six learned Judges of this Court, past and present, have come to a different conclusion and I should be slow to differ from the reasons of those for whom I entertain a genuine respect, if I could feel any real doubt about the matter. As I differ from them, I deem it proper to state the reasons which have led me to an opinion which, I am glad to find, coincides with that of my Lord. In other circumstances, I should have been content merely to express my concurrence with him.

Raghava Rao, J.

37. In his order recommending to the learned Chief Justice a reference to a Full Bench, Clark J. has pointed out a conflict between the cases of *Duraiswami Sastrial v. Venkatarama Iyer* (1911) 21 Mad. 1088 and *Krishna Hande v. Padmanabha Hande* (1913) 25 M.L.J. 442 on the one hand and the cases of *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.), *Mahomed Silar Sahib v. Nabi Khan Sahib* (1916) 31 M.L.J. 93, *Thimma Reddy v. Subba Reddiyar* 1918 M.W.N. 507 and *Muthusamy v. Narasimha* (1933) ILR 57 Mad. 696 on the other. The learned Judge has observed in relation to this latter line of decisions that they constitute an imposing list of authorities adverse to the Appellants in the present case, which he should have ordinarily felt compelled to accept, especially in view of the fact that the decision in *Muthusamy v. Narasimha* (1933) ILR 57 Mad. 696, the last of the latter line of decisions, was of the year 1934, whereas the later of the two decisions of the former line was a decision of 1913. Clark J. has however pointed out, as the ground of his not adopting that course, that there was no discussion in the case of *Muthusamy v. Narasimha* (1933) ILR 57 Mad. 696 of the decisions arrived at in *Duraiswami Sastrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088 and *Krishna Hande v. Padmanabha Hande* (1913) 25 M.L.J. 442, although the Bench which decided the earlier of these two cases consisting of *Sundara Ayyar* and *Phillips JJ.* had expressly dissented from, the observations of *Bhasyam Ayyarngar J.* in *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.), which have been followed in the cases subsequent to *Duraiswami Sastrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088 and *Krishna Hande v. Padmanabha Hande* (1913) 25 M.L.J. 442. The learned Judge also expressed a sense of regret that the point upon which the decision in *Duraiswami Sastrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088 was principally founded, which concerned Section 7 of the Limitation Act and the inference properly to be drawn from the wording of that Section, was not considered by the Bench which disposed of *Muthusamy v. Narasimha* (1933) ILR 57 Mad. 696.

38. Before I actually deal with the point referred, I must, in fairness to the learned Judges who decided the case of *Muthusamy v. Narasimha* (1933) ILR 57 Mad. 696, point out that although there is no reference in terms to the cases of *Duraisivami Sastrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088 and *Krishna Hande v. Padmanabha Hande* (1913) 25 M.L.J. 442 in the case of *Muthusamy v. Narasimha* (1933) ILR 57 Mad. 696, there is an observation with reference to

certain decisions quoted in the course of the argument before the Bench, as decisions given before the pronouncement of the Privy Council in *Ganesha Row v. Tuljaram Row* (1913) ILR 36 Mad. 295 (P.C.), which would certainly include the decision in *Duraiswami Sastrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088, though not the decision in *Krishna Hande v. Padmanabha Hande* (1913) 25 M.L.J. 442.

39. The able argument of the learned Advocate for the Appellants, based on the two cases of *Duraiswami Sastrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088 and *Krishna Hande v. Padmanabha Hande* (1913) 25 M.L.J. 442, has attempted to make two points : (i) that the observations of Bhashyam Ayyangar J. with reference to Section 8 of the Limitation Act then in force have lost their significance as a result of the amendment of that section by Section 7 of the Act of 1908 which takes in applications for execution as well as suits; and (ii) that the interpretation placed by that learned Judge on Section 231 of the CPC then in force, which corresponds to Order XXI, Rule 15, of the CPC of 1908, is erroneous.

40. With reference to the first of the points, it falls to be observed in limine that, while Section 8 of the Limitation Act then in force was held by Bhashyam Ayyangar J., as well as his colleagues on the Full Bench, not to be applicable to execution creditors for the reasons given by him at pages 441 and 442 of the case of *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.), his discussion of the question of limitation involved in the case also proceeded, as would appear from pages 439 to 441 of the report, on the basis that joint decree-holders might be regarded as joint creditors within the meaning of Section 8. On the basis so assumed, the learned Judge points out that the application of 25th February 1899 is not obnoxious to the law of limitation, whether the same be regarded as an application for execution of the whole decree made by the youngest brother alone u/s 231, Code of Civil Procedure, or by all the three brothers jointly, inasmuch as no discharge of the decree could validly be given either by the senior of the major brothers or by both without the concurrence of the youngest. Such a disability to give a valid discharge on the part of the senior of the major brothers or on the part of both of them without the concurrence of the youngest was inferred by the learned Judge from the language of Section 257, Code of Civil Procedure, then in force. Order XXI, Rule 1, of the present Code, which expressly provided that.

all money payable under a decree should be paid unless otherwise directed by the decree either (a) into the Court whose duty it is to execute the decree, or (b) out of Court to the decree-holder.

41. With reference to the language of that section the learned Judge further observes that he need hardly add that the expression "decree-holder" in the singular will include also the plural, and that, if the decree be in favour of two or more persons as joint decree-holders, the amount should be paid to all of them, just as, if the amount, were paid into Court, it would have to be drawn from the Court by all of them under a joint receipt. The learned Judge lower down

proceeds to consider the bearing of Section 231 of the CPC then in force--Order XXI, Rule 15, of the present Code--on the question before him in a passage which I may extract here:

A payment made out of Court only to one of several joint decree-holders cannot bind the others unless he was also constituted, by them, an agent for the purpose, in which case alone the payment can be recorded as certified u/s 258, Code of Civil Procedure. The mere fact that one of the joint decree-holders is the managing member of an undivided Hindu family consisting of the joint decree-holders, will not empower him to give a valid discharge of the decree-debt, without the concurrence of the remaining members, any more than it will empower him to execute the whole decree, as of right, without the concurrence of the remaining decree-holders. u/s 231, Code of Civil Procedure, any one of several joint decree-holders, constituting a Hindu family, whether he be the managing member or not, may, if the Court sees sufficient cause, be allowed to execute the whole decree and in that case the Court should pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application. As a general Rule such order will be a direction to the applicant for execution to furnish sufficient security for the protection of the interests of such persons.

Such being the basis of the discussion, at pages 439 to 441 of the report, however obiter the opinion expressed as a result of the discussion may have been, in view of the fact that the Full Bench held that joint creditors in Section 8 of the Indian Limitation Act then in force did not include joint decree-holders, I am clearly of the opinion that the mere amendment of Section 8 of the earlier Limitation Act by the Limitation Act of 1908 does not assist the case of the Appellant, unless he is also able to establish the further point that the interpretation placed by Bhashyam Ayyangar J. on Section 231 of the old Code--Order XXI, Rule 15, of the present Code--is erroneous. The amendment of the Statute of Limitations in 1968 does no doubt give legislative recognition to the competency of one joint decree-holder to give a valid discharge on behalf of the others. As the learned Judges who decided *Duraiswami Sastrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088 point out, and point out, if I may say so with respect, correctly, Section 7 of the present Limitation Act contemplates the existence of cases where one of several decree-holders can give a discharge without the concurrence of the others. But does it follow from the amendment that the limits of such competency too stand enlarged--the limits, I mean, which are indicated by Bhashyam Ayyangar J. in *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.)? So much in my opinion does not follow *ex necessitate rei*. Had an enlargement of such limits been contemplated by the legislature, one should have found an amendment made by the legislature, not merely of the language of Section 8 of the earlier Limitation Act so as to extend its operation to cases of execution creditors, but also of the language of Section 231 of the old CPC suitably enough to indicate legislative disapproval of Bhashyam Ayyangar J.'s interpretation of Section 231 of the old Code of Civil Procedure, craved by the

learned Judge in aid of his conclusion with reference to the limits--of agency created by the decree or post hoc--within which only one joint decree-holder can give a valid discharge on behalf of others as well as himself. In the absence of any such latter amendment, the effect of the former amendment seems, to my mind, to be no more and no less than this: one out of many joint execution creditors can now give a valid discharge on behalf of the others as well as of himself, but that the limits of the capacity of a joint execution creditor to give such a discharge remain still what Bhashyam Ayyangar J. pointed them out to be in *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.) The amendment of the provision of the Limitation Act effected by the legislature does not, by necessary implication, involve an amendment virtually, though not in terms, effected of the relevant provision of the Code of Civil Procedure, or a legislative repudiation of the reasoning employed by Bhashyam Ayyangar J. for defining the limits of the competency of one joint decree-holder to give a valid discharge on behalf of the others as well as of himself. It may be that, if Bhashyam Ayyangar J.'s interpretation of Section 231 of the old Code of Code of Civil Procedure--Order XXI, Rule 15, of the present Code is to be regarded as still correct, the amendment of the Statute of Limitations in 1908, which was only intended to place joint execution creditors on a line with other joint creditors, will not be found to be as useful as otherwise it would be. But it is no part of the function of this Court, in my opinion, to overrule such interpretation merely for the purpose of rendering the amendment of the Indian Limitation Act in 1908 more practically purposeful. After all, it is not as if the amendment of the relevant section of the Statute of Limitations in 1908 would be rendered altogether nugatory, unless Bhashyam Ayyangar J.'s interpretation of Section 231 of the old CPC should be overruled. Nor am I clear that the process of assigning to the legislature the interpretative functions of Courts, to use the language of *Coutts Trotter J.* (as he then was) in *Chidambaram v. Subramania* (1915) 3 L.W. 86, 88, should be so far pushed as to lead to the result contended for by the Appellants. Again, even in the case of statutes in *pari materia*, as pointed out in *Halsbury's Second Edition* of the Laws of England, Volume XXXI, on Statutes, at page 487, Section 612, change of language is not necessarily conclusive that change of interpretation is intended. Nor was it contended before us that a change of interpretation of Section 231 of the old Code of Civil Procedure--Order XXI, Rule 15, of the new Code--was intended by the legislature by the very language of the amended section of the Indian Limitation Act.

42. The point for consideration, then, is whether Bhashyam Ayyangar J.'s interpretation of Section 231 of the old Code--Order XXI, Rule 15, of the present Code--is erroneous. That, as already stated, is the second of the contentions raised by Mr. Narasaraju. It is true that the language of Section 231 of the old Code--Order XXI, Rule 15, of the new Code--is not in the first part of it which uses the word "may" and does not run in negative terms but positive, quite so explicitly mandatory or prohibitory as the language of Section 461 of the old Code--Order XXXII, Rule 6, of the present Code. But it is well known that even

the word "may" may sometimes have to be treated as mandatory and cannot always be treated as only permissive or enabling. It is relevant to notice further that an analogy between the two sets of provisions (i.e., Section 231 and Section 461 of the old Code--Order XXI, Rule 15, and Order XXXII, Rule 6, of the new Code--has from the very beginning entered into a discussion of the question now before us, in. all the decided cases beginning with *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.) and ending with *Muihusamy v. Narasimha* (1933) ILR 57 Mad. 696, including even *Duraiswami Sastrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088 and *Krishna Hande v. Padmanabha Hande* (1913) 25 M.L.J. 442. Only the case of *Duraiswami Sastrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088 differed from the interpretation of Bhashyam Ayyangar J. of Section 461 of the old Code of Civil Procedure, on the basis of the decision of Wallis J. (as he then was) on the Original Side of the High Court of Madras in *Ganesha Rao v. Tuljaram Row* (1908) 19 M.L.J. 4, confirmed in Original Side Appeal No. 47 of 1908, *Ganesha Row v. Tuljaram Row* (1909) 21 M.L.J. 1093. So the learned Judges who decided the case of *Duraiswami Sustrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088 held that the analogy of the provision of Order XXXII, Rule 6, no longer existed in support of the decision of Bhashyam Ayyangar J. in *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.). The curious thing to notice however is that when, by the date of the decision in *Krishna Hande v. Padmanabha Hande* (1913) 25 M.L.J. 442, the High Court's ruling in Original Side Appeal No. 47 of 1908, *Ganesh Row v. Tuljaram Row* (1908) 19 M.L.J. 4, had been definitely reversed by the Privy Council in *Ganesha Row v. Tuljaram Row* (1913) ILR 36 Mad. 295 (P.C.), the learned Judges who decided the case of *Krishna Hande v. Padnianabha Hande* (1913) 25 M.L.J. 442 still adhered to the decision in *Duraiswami Sastrial v. Venkatarama Iyer* (1911) 21 M.L.J. 1088, notwithstanding that one part of its reasoning had disappeared on account of the ruling of the Privy Council in *Ganesh Row v. Tuljaram Row* (1913) ILR 36 Mad. 295 (P.C.), which pro tanto rehabilitated the reasoning behind Bhashyam Ayyangar J.'s view in *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.). It seems to me that Bhashyam Ayyangar J.'S view of Section 461 of the old Code Civil Procedure--Order XXXII, Rule 6, of the present Code--rightly anticipated the decision of the Privy Council in *Ganesha Row v. Tuljaram Row* (1911) 21 M.L.J. 1088, and the only question is whether the analogy of that provision drawn upon by the learned Judge is well-founded.

43. The force of the analogy as applicable to the case on hand is brought out very lucidly and more elaborately than even in the judgment of Bhashyam Ayyangar J., by Sundarm Chetty J. in the case of *Muthusamy v. Narasimha* (1933) ILR 57 Mad. 696 in the following passage at pages 701 and 702:

We have no doubt that one of the joint decree-holders, though they are partners, cannot give a valid discharge by receiving the decree amount out of Court without the concurrence of the other decree-holders. A payment to one of them may under the general law relating to partnership be valid and binding on the firm, but that circumstance is not enough to validate the payment made to one

of them as against the other joint decree-holders, according to the principle of the decision of the Privy Council reported as *Ganesha Row v. Tuljaram Row* (1913) ILR 36 Mad. 295 (P.C.), though the particular provision of the CPC which their Lordships had to consider was Rule 6 of Order XXXII.

44. It is observed at page 303 as follows:

The Courts in India seem to think that because Rajaram was a party to the suit of 1886 and was also guardian ad litem for his minor son, who was a member of the joint family whom Rajaram was representing, it was open to him to enter into the compromise in his personal capacity, and, as it was a bona fide settlement of a disputed claim, it became binding on the minor by virtue of his having acted as the managing member of the family. But they consider it to be clear that when he himself is the next friend or guardian of the minor his powers are controlled by the provisions of the law and he cannot do any act in his capacity of father or managing member which he is debarred from doing as next friend or guardian without leave of the Court. To hold otherwise would be to defeat the object of the enactment.

After such a clear pronouncement by the Privy Council the fact that Narasimha Ayyar happened to be one of the partners in the present case does not help to make the payment to him of the decree amount a valid discharge binding on the other decree-holders.

Whatever might be said against the correctness of this interpretation of Order XXI, Rule 15, Code of Civil Procedure, based especially on the analogy of Order XXXII, Rule 6, Code of Civil Procedure, if the matter were *res integra*, I should think that, although we sitting as a Full Bench have the power to overrule this interpretation, we ought to hesitate to do so on the principle of *stare decisis*, especially because the point under consideration is one belonging to the domain of procedural law.

45. On the whole, I am not satisfied that the view taken in *Periasami v. Krishna Ayyan* (1902) I.L.B. 25 Mad. 431 (F.B.) and later decisions which have followed it, is founded upon such plainly erroneous construction of the relevant provisions of the CPC as to merit a reversal by this Bench. That is the consideration which we must bear in mind, having regard to the statement of the law in *Halsbury's Laws of England*, Second Edition, Vol. XIX, on Judgments and Orders, at page 257, Article 557. The view taken in *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.) is founded on a very carefully reasoned exposition of the law by that very distinguished Judge, Bhashyam Ayyangar J. and has been followed amongst other Judges by another distinguished Judge, Sadasiva Ayyar J. It has stood the field for more than four decades, and it is not, in my opinion, desirable that we should at the present juncture upset it. After all, the intrusion of the general substantive law into the region of an adjectival enactment such as the CPC (like its intrusion, if I may make a parenthetical observation, into the region of special enactments of substantive law, such as the Negotiable Instruments Act

which adapts the Law Merchant of England) must, in my opinion, be kept within the strictest possible limits, as such intrusion is calculated to create complexity and even engender confusion, to impair the certainties of the processual law and open the door to fraud. It was on this kind of consideration that the observations of Bhashyam Ayyangar, J. in *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.) apparently proceeded, in inferring from the milder language of Section 231 of the old Code, a prohibition analogous to that contained in the stronger language of Section 461. It is manifest that Clark J. in the present case would not himself have declined to follow the view taken in *Periasami v. Krishna Ayyan* (1902) ILR 25 Mad. 431 (F.B.) and *Muthusamy v. Narasimha* (1933) ILR 57 Mad. 696 but for the considerations adverted to by him in his order recommending a reference to a Full Bench, which I have endeavoured to prove in the foregoing to be lacking in sufficient foundation.

46. I accordingly answer the question referred in the negative.

47. This judgment so far read out, I had prepared before the judgments of the learned Chief Justice and my learned brother, Viswanatha Sastri J., were circulated to me. After reading those judgments I have entertained no doubt but that the case for a view contrary to that taken by that eminent Judge, Bhashyam Ayyangar J., could not have been put more strongly than in those judgments. I remain unconvinced however that the way to approach the decision of the question referred to us is not what I have indicated in the foregoing part of my judgment. How far the general law should be permitted to encroach upon the region of processual law and hamper, if not altogether frustrate, the obvious object and broad purpose of the provisions of Order XXI, Rules 1 and 15, of the Code Civil Procedure, how far the catena of decisions which has sprung up in this Court after the decisions in *Duraiswami Sastri v. Venkatarama Iyer* (1911) 21 M.L.J. 1088 and *Krishna Hande v. Padmanabha Hande* (1913) 25 M.L.J. 442 on the basis of the observations of Bhashyam Ayyangar J., which those two decisions, in my opinion, unnecessarily dissented from, should be disturbed in the interests of justice at this hour of day--those are the considerations which have determined the perspective from which I have approached the decision of the question referred and which account for the difference of opinion between the majority of the Bench and myself as revealed by our judgments. Founding myself as I have done, I hope correctly, on those considerations, I find myself forced to disagree with respect with the view of the majority and abide with respect by the view of Bhashyam Ayyangar J. and Sadasiva Ayyar J., which has prevailed in this Court more or less uniformly for about half a century, subject only to the dissident note struck in *Duraiswami Sastri v. Venkatarama Iyer* (1911) 21 M.L.J. 1088 and *Krishna Hande v. Padmanabha Hande* (1913) 25 M.L.J. 442, which has been, not altogether without reason, as I have endeavoured to show in the foregoing, taken no notice or serious notice of for over thirty five years.

48. The appeal came on for final hearing before Govinda Menon J. after the

expression of the above opinion of the Full Bench, his Lordship delivered the following Judgement:

49. Following the opinion of the Full Bench, it has necessarily to be held that the satisfaction of the decree to the extent of Rs. 2,750 (Rupees two thousand seven hundred and fifty only) should be recorded. As regards the balance amount due, execution will proceed. The decision of the lower appellate Court is reversed to that extent, and the appeal allowed so far. The Appellant will get seven eighths of his costs in the appeal payable by the Respondent.