

(1956) 04 MAD CK 0008
In the Madras High Court
Case No : Appeal No. 94 of 1952

P. Murugayya Pillai and Others		APPELLANT
	Vs	
S. Somasundaram Pillai and Others		RESPONDENT

Date of Decision : 11-04-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 16
Evidence Act, 1872 — Section 101, 102, 103, 104

Citation : AIR 1957 Mad 100

Hon'ble Judges : Ramaswami, J; Govinda Menon, J

Bench : Division Bench

Advocate : R. Gopalaswami Iyengar, for the Appellant; S.V. Venugopalachariar and S. Venkatesan, for the Respondent

Final Decision : Allowed

Judgement

Govinda Menon, J.—I agree with my learned brother in the conclusion arrived at by him that the plaintiff has failed to substantiate the

agreement set up by him and, there-fore, there is no reason whatever to hold that the business in cocoanuts and plantains run in the vilasam of the

third defendant from 1939 was a continuation of the old family business.

2. On the question of law raised with regard to the burden of proof in a case like this where the person liable to account is not alive at the lime the

account has to be taken and his legal representative in view of the inheritance of his property has to render accounts, it seems to me that there is an

initial burden on the plaintiff who asks for accounts to show that the individual liable to account has not discharged his burden in regard to Sums of

money that have come into his hands. Where the principal uses his agent for rendition of accounts and the burden falls upon the legal representative

of the agent what is to be the onus:

Spencer and Odgers, JJ. in *Srimat Tirumala Peddinti Sampat, Kumara Venkatacharyulu, minor by next friend Venkata Lakshammamma Vs. Mohana*

Panda and Others, observed as follows:

This is made clear by the observations of the Calcutta High Court in *Kumeda Charan Bala v. Ashutosh Chattopadhyaya* 17 CWN 5 and in another

case in the same volume *Maharaj Bahadur Singh v. Basanla Kumar Hoy* 17 Cal WN 695 the latter being one where, as here, the agent died

pending the suit and the suit was continued against his legal representatives.

At p. 9, it is observed that the only difference in substance between a suit for an account against an agent and the same suit against the agent's

representatives will be that the burden of proof will be upon the plaintiff to establish his case". Again in *Golla Kondamma and Others Vs. Golla*

Chinna Subba Reddi and Others, there are useful observations": *Curgenvcn, J.* observed

It may be, as was admitted in *Srimat Tirumala Peddinti Sampat, Kumara Venkatacharyulu, minor by next friend Venkata Lakshammamma Vs.*

Mohana Panda and Others, that the onus and methods of proof may differ when the suit is against a legal representative and it may even be that the

remedy would be different in kind but those are no reasons for holding that a fresh cause of action arose when the assets liable for the claim came

into the defendant's hands upon their father's death. These two cases were considered in *Kasi alias Alagappa Chettiar and Others Vs. RM. A.*

RM. V. Ramanathan Chettiar alias Sreenivasan Chettiar and Another, but it was unnecessary, to apply the principles to that case for the reason

that the person sought to be made liable as the accounting party was an original partner.

The learned Judges did not differ from the principle that the legal representative of an agent or partner is not liable in the same manner as the agent

or the partner but that the plaintiffs should allege and prove their right to any specific sums of money that may be claimed by them.

3. In my view, therefore, the liability of defendants 2 and 3 to render an account for the dealings of their father the first defendant is not the same as

that of the first defendant The plaintiff will have to show, unless it is proved, that defendants 2 and 3, are suppressing the account books of their

father, that particular sums of money have gone into the hands of the first defendant and that has not been accounted for by them.

4. I am in agreement with my learned brother on the rest of the points involved in the appeal.

Ramaswami, J.

5. This is an appeal preferred against the decree and judgment of the learned Subordinate Judge of Kumbakonam in O. S. No. 23 of 1946.

6. The controversy in this case may be easily followed if we bear in mind the following geneoloical tree:

SELLA PILLAI (DIED)

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Pakkirisami Ratnam Pillai Muthu Pillai Gurusami Pillai Somsundaram Govindsami

Pillai (D.1) (Divided long ago) (Died) (Died without issue) Pillai (Plaintiff) Pillai (D.6)

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| Sambandam Pillai Vythinatha Pillai

| (D. 4) (D. 5)

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Murugaiya Pillai Doraisami Pillai

(D. 2) (D. 3)

7. There is no dispute that the family of the plaintiff, first defendant and Muthu

Pillai and (6th defendant) owned lands, buildings, leasehold rights, a running business in purchasing and selling cocoa-nuts and plantains and a grocery shop and had also outstandings and moveables. Gurusami Pillai having died without issue he does not come into the picture. The other brother Ratnam Pillai got separated from the family as early as 1924 having executed a release deed Ex, B-21. The other members of the joint family also wanted to get divided at about that time and in fact a mediation was invited for that purpose under Ex. B-14 dated 6-2-1923.

But while Ratnam Pillai got separated the others preferred to remain joint. Subsequently also there were several attempts for division of the moveable and Immovable properties. In 1929 one Ponnuswami Pillai was invited under Ex. B-15 to get the division effected. This proved fruitless. In 1934 the brothers took the aid of Velu Padayachi, Pavadai Padayachi and Subbiah Naicker for that purpose. But this also came to nothing as the first defendant demanded an extra share as the eldest son, which the other brothers were unwilling to concede.

In the same year there was another attempt at partition by the mediation of Panchapakesa Ayyar, the karnam of Tuhili, Doraisami Mudaliar and Tuhili / Muthiah Pillai. ExS. B-6 to Rule 10 and A-8 relate to to that attempt, which also proved unsuccessful. The efforts of the Panchayatdars failed, according to Muthiah Pillai examined as P. W. 2, because the parties could not agree either about the jewels which were sought to be divided or about the other assets of the family.

The mediators did not divide the house or lands of the plaintiff's family. There was no enquiry about the plantain and cocoanut trade and grocery business because according to the appellants before us that trade had stopped by 1934 owing to differences in the family and according to the plaintiff because the accounts were asked for and not produced by the father of the appellants viz., the first defendant, who was stated to have been the manager.

In regard to this mediation the Karnam Pan-chapakeSa Ayyar examined as D. W. 10 stated that he mediated once, although P. W. 1 would like us to believe that he mediated twice. But whether he mediated once or twice, what was done was that lists were drawn up and a draft partition deed Ex. A-9 was made and nothing further happened In 1935 again a draft

partition deed was written but not completed; Vide Ex. A-10. The next mediation was in 1938 by one Hangaswami Reddi which did not prove successful.

Ex. A-11 is the list prepared by Rangaswami Reddi for the purpose of effecting partition. Ex. A-12 is the draft of a partition deed written in 1938

by D. W. 10. But this draft did not result in a partition deed being executed. In 1939 the parties sought a mediation by an influential ryot of

Tirukkodikaval by name Narayanasami Padayachi, Krishnaswami Ayyangar, examined as D. W. 3, and one Doraisami. Padayachi. To these

three persons, the brothers executed the letter of authority Ex. A-5.

They agreed to abide by the arbitration of the mediators and executed Ex. A-4. Some of the family properties viz., those in the village of Thuhili

were placed in the possession of the mediators who leased them out, paid the taxes and collected the rent;

See Exs. B-35 to B-44 and B-45 to B-51. It would appear that the lands of the family in Narasingam-pettai and other lands taken on lease by

them were not put in the possession of the mediators, In this mediation a strenuous attempt was made to draw up lists of the assets of the family.

D. W. 3 Krishnaswami Ayyangar collected data with the help of some of the accounts which the first defendant produced before him: see Exs. A-

13 and A-14 and the file containing Exs. A-15 and A-34. D. W. 3 seems to have consulted the ledger Ex. A-20 but no original debt bonds or

other documents were forthcoming. This mediation lasted from 1939 to 1943.

In 1943 a partition deed was written but was not registered although an attempt was made on the last day of registration to get it registered. Before

the lists of properties were framed on the stamp paper D. W. 3 drew up four lists which are marked as Ex. A-7, which are in his handwriting

excepting the date 17-9-1940, which appears on the docket of Ex. A-7, and which he denies was written by him.

In Ex. A-6 dated 27-5-1941 the four lists of properties (lists A to D) are mentioned and this shows that they refer to the lists in Ex. A-7. It is now

found that between the dates of Exs. A-7 and A-17, the partition deed, this D. W. 3 did not draw up any other lists.

The parties, both the plaintiff and defendants 2 to 4 and 6, have categorically stated in the lower court that they were willing to abide by this

partition arrangement contained in Ex. A-17, and as pointed out by the learned Subordinate Judge, it has therefore become merely academic to

consider whether there was a complete partition of all the moveables and immovables in 1934 itself or whether the mediation of 1934 was like its

predecessors incomplete. The immovables had to be divided at the mediation of 1939 and it is clear from Ex. A-17 that some time before that

document was written the movables have been divided.

It is common ground that for several years prior to the date of Ex. A-17 the four brothers had been living Separately, that they were having

separate dealings of their own and independent avocations and means of livelihood and were making separate acquisitions and alienations and that

in fact the vilasam of the very cocounut and plantain purchase and sale business had been changed in the name of the third defendant, a junior

member of the family.

8. Therefore let us see what is the exact controversy between the parties in this suit. We have just mentioned before that all the parties wished to

abide by the partition deed Ex. A-17. Therefore, the decree of the lower court confirming the partition arrangement as per Ex. A-17 subject to the

modifications made in Exs. A-13, A-14 and A-19 and giving a preliminary decree for division of the properties set out in schedules E to G and for

possession of the plaintiff's 1/4th share in schedules E and G is undisputed before us and consequently does not require to be dealt with by us any

further.

In regard to the F Sch. property the learned Subordinate Judge has rightly pointed out that possession cannot be awarded at this stage because the

usufructuary mortgage in favour of the 7th defendant is still outstanding.

Then in regard to the assets, moneys and out-standings belonging to the joint family in the hands of defendants 2 to 4 and 6 to 9 in respect of which

a division thereof into four equal shares and allotment of one-fourth share therein to the plaintiff given under the preliminary decree, there is also

110 dispute before us. The appellants agree that if in such an account taking it is proved that the shares of brothers other than their father had come

into their hands then those must be made available for partition.

9. The learned advocate Mr. Venugopalachari wants us to make it clear that the term ""assets"" include the pre-1939 cocoanut, plantain and

grocery-business in regard to which the case for the plaintiff is that such business ran, being financed by joint family funds, and the-case for defendants 2 to 4 is that no such business ran.

We may point out here that the learned Sub-ordinate judge has dismissed the claim of the plaintiff in regard to the business said to have been

carried on by defendants 4 and 5 and the correctness of this decision is not canvassed before us, and the plaintiff has not filed any appeal relating

thereto. We have no objection to make it clear that the term ""assets"" will include any business in cocoanuts, plantains and grocery before 1939,

though we express no opinion about whether any such business was run between 1933 and 1939 or whether accounts were kept and have been

suppressed by anybody or the quantum of proof which will have to be adduced by the respective contesting parties.

It would be enough for us to point out however that the burden of proof lying on the plaintiff will be affected by the fact that the first defendant,

father of defendants 2 and 3 who is stated to have been the joint family manager, had died and the persons to whom liability, if any, would have to

be brought home are the legal representatives of the deceased first defendant. The management of this first defendant also, if any, falls into two

periods -viz., as joint family manager before 1934 and as a tenant-in-common after 193-1. The distinction between the management by a joint

family manager and a tenant-in-common in regard to accountability has been pointed in Sri Ranga Thathachariar v. Srinivasa Thathachariar 1LR 50

Mad 866: (AIR 1927 Mad 801) (F).

10. Therefore, in regard to the bulk of the controversy before the lower court there is no dispute before us and the only controversy before us is

that raised by the appellants viz., defendants 2 and 3 and which is stoutly resisted by the plaintiff respondent viz., about the business in cocoanuts

and plantains and grocery run after 1939 in the vilasam of the third defendant.

11. The case for the plaintiff in regard to this business run under the vilasam of the third defendant is set out in paragraph 10 of the plaint as follows:

The family owned a business in plantains and cocoa-nuts. This was not divided but left and agreed to be divided later on and continued as a

common concern for the benefit of all under the respective shares.

In paragraph 24 (b) the relief claimed is : ""That defendants J to 3 be directed to

strictly account for the business in cocoanuts and plantains from 1939 onwards and defendants 4 and 5 from 1943". In this evidence the plaintiff has developed this arrangement put forward by him and he states

(page 83 of the printed papers):

"The arrangement between us was that defendant 1 and his sons should carry on the coconut trade and maligai business, collect the outstanding due to those ventures and invest them in the same business". The substance, therefore, of the plaintiff's claim is that by an arrangement arrived at between the parties after they had become tenants-in-common the business in cocoanuts and plantains which was in the vilasam of the third defendant was to be run as a partnership business with the joint family stock-in-trade and goodwill and was to be financed by realization of outstandings and the joint family funds and that the profits were to be made available to all the brothers that finally the asset itself was to be made available for division amongst the brother

12. On the other hand the case for defendants 2 and 3 adopting the position taken by their father the first defendant was;

The family did not own any trade in plantains and cocoanuts. They were doing some small business in this line mainly by selling the plantains and

cocoanuts from the family properties before 1933 and 1934. But even this small business was stopped in 1933-34 and after that date the family

never had any trade or business in plantains and cocoanuts", (see paragraph 8 of the written statement of defendants 2 and 3).

Again in Paragraph 13 they state:

Each branch of the family has been living apart and each having separate leases and other business, etc. and earnings for the last over 15 years. In

the same way these defendants have started a separate business in a small way in plantains and cocoanuts in or about December 1969. It is not a

continuation of the family business which was stopped several years previously.

No funds of the family or assets of the old business were used in this new business. This business is exclusively the separate business of these

defendants and the other sharers have no interest or concern therein. This fact is well known, to the other parties and has been expressly admitted

by them. Hence these defendants cannot be called upon to account in respect of this business".

13. The learned Subordinate Judge upheld the version of the plaintiff and gave a decree that defendants 2 and 3 should render accounts to the

plaintiff and the 6th defendant of the business in cocoanuts, plantains and groceries from 1939 onwards and for the recovery of plaintiff's one-

fourth share out of the amounts found due. The defeated defendants 2 and 3 appeal against this part of the decree.

14. On a review of the entire circumstances of the case, we have come to the conclusion that the lower court was not at all justified in accepting

the version of the plaintiff in preference to the version of defendants 2 and 3 proved to the hilt and that this most unsatisfactory part of the learned

Subordinate Judge's judgment cannot be upheld. Here are our reasons.

15. There is no presumption that a business carried on by a member of a joint family, is joint family business: *Vadilal v. Shah Khushal ILK 27 Bom*

157 (G) Nor is there any presumption that a business carried on by such a member in partnership with a stranger is joint family business: *Mirza*

Mal Bhagwan Das Vs. Rameshar and Others . There is no presumption that a business started by even a manager is joint family business, but if the

joint family funds are utilised in opening a new branch then the new branch will be regarded as part of the old business: *Ram Nath and Another Vs.*

Chiranji Lal and Another, . It is a question of fact in each case whether the business is a continuation of the joint family business or is a new

business of the individual co-parcener or tenant-in-common.

16. The agreement on the foot of which this joint family business is adumbrated stands wholly unproved. It rests for its credence only on the

testimony of this plaintiff examined as P. W. 1. One has to read the deposition of this witness to come to the conclusion that on his testimony no

reliance whatsoever can be placed. The learned Subordinate Judge in a score of places had made notes showing that this witness was prepared

to deny every thing until he was confronted with the actual document to which he was a party. His own evidence regarding this alleged arrangement

has been extracted above and in regard thereto he has made the following statement.

""I cannot say when the arrangement was entered into. But I am sure it took place anterior in date to the execution of Ex. A-17 but I cannot say

even approximately how long prior to Ex. A-17 this arrangement took place. The

arrangement was come to in the presence of mediator

Narayanaswami Padayachi. He and Krishnaswami Ayyangar alone know about It". .

This Narayanaswami Padayachi referred to is not a witness. As regards Krishnaswami Ayyangar examined as D. W. 3, he does not support the

plaintiff. The oral evidence of this plaintiff must be false because he has to admit that the contemporaneous document drawn up, Ex. A-17, does

not make any reference to it and which the document would have made if this arrangement were true. This plaintiff states :

In order to defraud us no mention was made of this arrangement in Ex. A-17..... I don't remember when defendant 1 and his sons stated that no

mention should be made in Ex. A-17 of the arrangement. The Panchayatdars also stated that nothing should be mentioned in Ex. A-17 about the

trade assets.

The Panchayatdars examined did not support this version of the plaintiff and in fact their evidence is that no such mention was made because the

parties concerned took an oath by putting out burning camphor that the coconut and plantain business had stopped by 1933. The plaintiff further

states:

Defendant 6 did not say that any recital about the trade assets should be made in Ex. A-17. When I signed Ex. A-17 I did not know that it did

not contain any recitals about the continuation of the family trade, the collection of the outstandings and the execution of a separate document

regarding them. I did not read and was not aware of the contents of Ex. A-17 before I signed it. It was not read out to us. Even when Ex. A-17

was executed I did not raise the question of the non-inclusion in Ex. A-17 of the trade assets and accounting." This statement is being made by this

plaintiff because Ex. A-17 contains specific mention of this. D. W. 3 states.

Defendant 1 represented that defendant 3's trade had no connection with the family and that he (defendant 3) was carrying on trade with

borrowed capital. Plaintiff and defendant 6 challenged defendant 1 to take oath that the trade was not carried on with family funds.

It was Thaugavelu Padayachi D. W. 4 (who corroborates D. W. 3) who brought the camphor. Plaintiff and defendant 6 accepted defendant 1's

oath. Then defendant 1 wanted that the other sharers should also take solemn

oath that they were not in possession of joint family property.

Plaintiff and defendant 6 took oath as challenged and defendant 1 accepted their statements on oath..... After all this was over Ex. A-17 was

written and the brother signed it. Each page of Ex. A-17 was signed on the same day and at the same time.

After EX. A-17 was written defendant 1, plaintiff and defendant 6 asked me why no mention was made about the taking of oath. I stated that I

considered it unnecessary but decided that mention should be made of it in Ex. A-17. So I wrote accordingly and obtained the signatures of the

parties thereto. Ex. A-18 is the portion which I wrote. Ex- A-18 was written and signed on the very day on which Ex. A-17 was written.

It is false that I obtained the signatures below a blank space representing that I had omitted to write certain boundaries and have subsequently in

terpolatcd Ex. A-18 above their signatures."" Ex. A-18 gives the lie direct to the evidence of the plaintiff about the alleged agreement.

17. The evidence of this plaintiff whom we are constrained to characterise as a person unworthy of credence is not corroborated by the other

witnesses examined by him. P. W. 2 stated :

All these 30 years each of the brothers has been living separately and has been having separate mess -- The cocoanut trade was also a small one.

It was carried on in a portion of the same (maligai) shop. The maligai shop -- was not a big one but only a small one. I cannot say if the cocoanut

trade was stopped in 1933.

P. .W. 3 testified :

I had dealings with the- cocoanut shop of defendants 1 to 3. I do not remember if there was notice of demand for cists rent. (S. C. No. 653 of

1937). I did not contest the suit. I did not pay the amount due for the decree to defendant 3..... The cocoanut business was done in the maligai

shop..... I cannot say whether the cocoanut trade was carried on between 1933 to 1939.... The dealings with defendant 1's cocoanut shop

ceased three years before he filed the suit (S. C. 653 of 1937) against me..... I do not know when defendant 1's cocoanut trade was stopped.

P. W. 5 mentions in Examination-in-chief :

In connection with the lease transaction I became indebted to defendant 1.... I executed a pro-note to defendant 1. Two years ago I executed a

pro-note to defendant 2. It does not appear that the cocoanut and plantain trade of defendant I was stopped from 1933 to 1939. I used to go that side often.

In cross-examination he states :

I never traded in cocoanuts with defendant 1 or 2. During these 19 or 20 years I have not sold any plantains to any one..... Cocoanuts and

plantains used to be counted in that shed.... Defendant 1 used to purchase cocoanuts from N. T. Bangaswami Pillai and the Tiruvadudurai Mutt.

Defendant 1 has complained to me that he had given money to N. T. Rangaswami Reddi but that the latter did not supply cocoanuts to him. 1

cannot specify with which persons defendant 1 carried on trade dealings after 1933.

P. W. 6 stated :

Plaintiff brought me to court.... I used to ply my cart for hire for any one who engaged my service. I have plied the cart for hire to defendant 1

also... 1 used to cart cocoanuts and plantains for defendant 1 in my cart for 30 years. I owed Rs. 70 to defendant 1,.. I executed a pro-note for

the amount which I owed defendant 1.

After I executed the pro-note I ceased to ply the cart for hire for them..... I cannot say in which year it (cocoanut trade) was stopped.... I sold my

cart and bulls to another person and paid the debt due to defendants 1 to 3." P. W. 8 states that he had not noticed whether the trade in cocoanuts

and plantains" was stopped between 1933 to 1937 and that the partition talks fell through because of disputes about cash, jewels and the money

payable for building a house for Muthu Pillai.

This witness was not asked and he has not stated that the partition talks fell through on account of the non-production of the accounts which was

the case for the plaintiff. P. W. 10 who became the karnam of Narasingampettai merely states that plaintiff and his brothers have been trading in

cocoanuts and plantains and he was not cross-examined as the defendants vakils were absent. His testimony is entitled to no weight. It may

therefore legitimately be stated that far from corroborating the plaintiff these witnesses do not support his version.

18. In fact as early as 1935 itself in O. S. 2 of 1935, which was a suit for maintenance filed by the sister-in-law of the plaintiff to which plaintiff and

first defendant were parties also, the position taken by this first defendant was that this coconut and plantain trade had come to an end by 1933

and it was not established that there was any such family business from out of which the maintenance could be paid. In fact (his plaintiff has stated

in his evidence :

In O. S. No. 2 of 1935 defendant 1 made a false statement that the trade was stopped in 1933. He made it in order that the maintenance due to

Sundaratham may be minimised. All of us four brothers jointly made such a statement. We engaged a single vakil for our defence in that suit.

Even before O. S. No. 2 of 1935 was filed there were misunderstandings between me and my brothers and we had exchanged notices.

Yet we joined together to fight Sundaratham. Defendant 1 stated that we should join hands to defeat Sundaratham. (He is told that he and

defendant 0 filed separate written statement).....

I don't remember if defendant 6 and I engaged a vakil and filed a separate written statement. (Then the statements were put to the witness)..... I

do not remember if I alleged that defendant 1 did not render proper accounts and that he should render such accounts." It cannot therefore be

stated that the first defendant and his sons are coming forward with a new version in order to defeat this plaintiff now.

19. In 1939 the business was being run only in the vilasam of the third defendant. It is obvious that if it were a family business it would not have

been run in the vilasam of a junior member viz., the third defendant. The plaintiff states :

I know even in 1939 about the change of vilasam in defendant 3's name. I did not raise any objection to the change of vilasam or state that the

vilasam should be in my name or defendant 6's name. In the business carried on in defendant 3's name there is a ledger page in my name. In it

entries have been made in my name in respect of transactions with one Narayana Pillai.

These two facts viz., that the business was run in the vilasam of the third defendant and that the plaintiff had a ledger page in that business show that

it could not have been a joint family business under an arrangement as pretended to by the plaintiff.

20. The plaintiff has also had to admit that the outstandings on account of the

trades were collected by filing Suits. He agrees :

All of us brothers joined in filing O. S. No. 23 of 1930 against Kannappa Chetti. All of us filed S. C. No. 24 of 1933 (Sub Court, Kumbakonam)

against Sellakutti Naicken and others.

but adds a gloss for which there is no warrant:

Defendant 1 used to associate us in actions for debts which cannot be realized. In respect of outstandings which could be collected, he did not

associate us. We used to sign whatever paper he wanted us to sign.

Then he admits to his being a co-plaintiff in the suit against Tiruvaduthurai Muhammad Ibrahim Rowther and Esuf Rowther and others.

21. In fact at that stage in 1939 there could not be the slightest ground for the continuance of any business jointly. By that time it is common ground

that these brothers have all become separated and the properties have all got divided. P. W. 1 states :

Two or three years after our father died each of us brothers began to live separately, having separate mess."

He then proceeds to state how the various brothers were eking out their livelihoods. Again he states :

The movables and cattle were divided after 1938. They were divided even before 1938 but I cannot say how long before -- Possession of our

respective shares was given to each of us as soon as the list Ex. A-7 was drawn up in 1940.... Even in 1938 the lands were divided and each of us

has been enjoying our respective shares since then." It is unnecessary to multiply these details because excepting for the formal registration of Ex.

A-17 long before that everything had got divided in a Series of partitions extending over several years. The brothers were at daggers drawn and

did not trust each other. In these circumstances, after 1939, why should there be an arrangement for carrying on the coconut and plantain trade?

22. The plaintiff no doubt talked a lot about the outstandings and accounts. But when we come to scrutinise his testimony and those of his

witnesses and the documents filed, we find not a tittle of evidence to show what joint family funds went into this business in 1939, apart from the

fact that the trade itself was a small one requiring an outlay of Rs. 500 as is seen from the evidence and which consisted of buying coconuts and

plantains on credit and immediately marketing them and repaying the owners

after deducting the commission and profits.

This trade did not require any large outlay which could not be spared from out of The separate properties of the first defendant. In fact to such an

extent has the greed of this plaintiff gone that he was. prepared to claim the properties of several persons as benami for first defendant and

concerning which we have his own wild conjectures and not any tangible proof,

In regard to the accounts, what is the nature of the elaborate accounts required for this trade? Apparently the parties being practically illiterate for

carrying on this business of buying and selling cocoa-nuts and plantains they seem to have maintained scrappy accounts, some of which have been

produced, some of which seem to have been filed in suits and some of which are not traceable¹. They were not paying any Income Tax or sales-

tax or carrying on any banking business or big shop business.

On the other hand, even the P. Ws say that in a shed one portion consisted of a small grocery shop and another portion consisted of stock, of

cocoa-nuts and plantains before being carted to the shandy.

23. The plaintiff has not only claimed this business of defendants 1 to 3 but also wanted to lay hands on what he described as the big business of

defendants 4 and 5 and which claim has been found to be false by the learned Subordinate Judge and against which no appeal has been preferred

by this plaintiff.

24. The net result of this analysis is that there seems to have been some joint family business in cocoanuts and plantains which seems to have come

to an end some years before 1939 and concerning which the plaintiff has been dunning the first defendant for accounts, apparently thinking that

large profits had been made and he will get a sizable share.

But he was not in a position to bring home anything to defendants 1 to 3 and therefore at the time of Ex. A-17 the parties appear to have

challenged each other to take oaths and the defendants had taken oaths that no joint family fund has been invested in this coconut and plantain

business of 1939 run in the vilasam of the third, defendant.

There is no reason to distrust this testimony regarding the taking of oaths which is spoken to by the panehayatdars and there is only the bald

testimony to the contra of this plaintiff who is prepared to swear to falsehoods to

suit his purpose and concerning which oaths taking incident the learned Subordinate Judge was constrained to agree. No doubt, the idea of settling matters by administering oaths appears to have been entertained at the mediation : see paragraph 34 of his judgment.

In the face of the large volume of evidence about this taking of oaths which could not be a figment of imagination; all that can be stated is that

notwithstanding the taking of oaths the parties have not considered this as conclusive in regard to the disputes between them. On the other hand,

the evidence given by the plaintiff relating to Ex. A-17 and the evidence given by Krishnaswami Ayyangar (D. W. 3) regarding Ex. A-18, clearly

show that at the time of the mediation the plaintiff was not able to substantiate that joint family funds went into the 1939 business but was content to

accept the taking of oaths by the opposite party and drop the matter and he has now revived it once again to try his luck in Court.

25. The learned Subordinate Judge has also overlooked that the provision for equalization is also a pointer to the completeness of the division.

26. In short, the plaintiff has completely failed to substantiate the agreement set up by him and there is no reason whatsoever to conclude that the

business in cocoanuts and plantains run in the village of the third defendant from 1939 was a continuation of the old family business in which the

common family monies and collections of outstandings had been "invested. Therefore, the plaintiff is not entitled to the relief granted by the learned

Subordinate Judge in Clause (3) of paragraph 45 of his judgment. The decree and judgment of the lower court, in so far as defendants 2 and 3

were made to render accounts to the plaintiff and the sixth defendant of the business in cocoanuts, plantains and groceries from 1939 onwards

and for the recovery of plaintiff's one-fourth share out of, the net amounts found due, are set aside and the suit relating to the same is dismissed

and the appeal is allowed. No costs.