

(1954) 05 MAD CK 0021

In the Madras High Court

Case No : S.T. Appeals No's. 10 to 12 of 1953

The Executive Officer for Sri Navaneethakrishnaswami
Devasthanam, Veerakeralampudur

APPELLANT

Vs

Rukmami and Co. Ltd. and others

RESPONDENT

Date of Decision : 06-05-1954

Acts Referred:

Contract Act, 1872 — Section 32, 56

Citation : (1954) 05 MAD CK 0021

Hon'ble Judges : Satyanaravana Rao, J;Rajagopalan, J

Bench : Division Bench

Advocate : M. Seshachalapathi, T.M. Chintnayya Pillai, R. Ramamurthi Ayyar and V. Meenakshisundoram, for the Appellant; A. Sundaram Ayyar and M. Natesan, The Advocats-General, Madras Mr. V.K.T. Chari for Madras State and The Advocate-General andhra Mr. D. Narasaraju for Andhra State, for the Respondent

Final Decision : Dismissed

Judgement

1. These three appeals were preferred under S. 51 of the Madras Estates (Abolition and Conversion into Ryotwari) Act (Madras Act XXVI of 1948) to the Special Tribunal against the decision of the Estates Abolition Tribunal, Madurai, in O.P. Nos. 63 and 64 of 1952. S.T.A. No. 10 of 1953 is by the Executive Officer of Sri Navaneethakrishnaawami Devasthanam, Virakeralampudur against the decision in O.P. No. 64 of 1952. S.T.A. No. 11 of 1953 is by the zamindar and his two sons against the decision of the Tribunal in O.P. No. 64 of 1952 relating to Uthumalai estate. S.T.A. No. 12 of 1953 is also by the same persons against the decision in O.P. No. 03 of 1952 and pertains to Surandai estate. All these appeals relate to claims preferred by various persons to the compensation deposited by the Government after the estates of Uthumalai and Surandai were taken over after the notification dated 3rd January, 1951 under the Madras Estates (Abolition and Conversion into Ryotwari) Act, hereinafter called "the Act". The Tribunal declared that the first petitioner in O.P. Nos. 63 and 64 of 1952 was entitled to a sum of Rs. 1,33,250-5-7 out of the deposit to the credit of

Uthumalai and Surandai estates, and petitioners 2 to 5 were similarly entitled to a sum of Rs. 2,05,572-0-6 . A sum of Rs. 86,941-13-0 was directed to be kept in deposit pending decision in O.P. No. 129 of 1952 in respect of the claim by the Union Government for the payment of income tax. From out of the balance after keeping the said amount in deposit a sum of Rs. 1,556-0-4 was directed to be paid to the employees by the consent of all parties. There was available from and out of the deposit a sum of Rs. 75,662-3-4 and the first petitioner was directed to be paid out of this amount. The other petitioners, Nos. 2 to 5, did not get anything as the entire amount was directed to be paid to the first petitioner in O.P. No. 64 of 1952. In O.P. No. 63 of 1952 a sum of Rs. 14034-0-0 was directed to be paid to the first petitioner, and as no more money was available no order for payment of any amount to petitioners 2 to 5 was directed. The petitioners and the respondents in O.P. Nos. 63 and 64 of 1952 are the same. O.P. No. 64 of 1952 related to Uthumalai estate and O.P. No. 63 of 1952 related to Surandai estate, and both form part of the impartible estate of Uthumalai and was included in the schedule to the Madras Impartible Estates Act 11 of 1904.

2. These estates of Uthumalai and Surandai were notified on 3rd January, 1951 under the Act. For Uthumalai and Surandai zamins respectively were deposited in the office of the Tribunal Rs. 1,64,160 and Rs. 14,054. In respect of this compensation deposited with the Tribunal there were several claims. The landholder himself filed O.P. No. 209 of 1951, and there were claims by maintenance holders and also by persons claiming to be creditors of the zamindar. income tax was payable to the Union of India, and they filed O.P. 129 of 1951. The executive Officer of Sri Navaneethakrishnaswami Deity, Veerakeralampudur, filed O.P. No. 125 of 1951. There were other petitions also by other people details of which are set out in the judgment of the Tribunal, but they are not very material. The two petitions which were taken up for trial, and in which the maintenance holders and creditors were allowed to contest the claim by filing counter affidavits were O.P. Nos. 63 and 64 of 1952. They were made amenable parties and were allowed to contest the petitions.

3. O.P. Nos. 63 and 64 of 1952 were filed under S. 42 of the Act. In O.P. No. 64 of 1952 the prayer of the petitioners was that a sum of Rs. 1,33,250-5-7 out of the compensation amount should be paid to the first petitioner and a sum of Rs. 30,909-9-10 to petitioners 2 to 5 from and out of the compensation amount deposited with the Tribunal in respect of Uthumalai estate. In O.P. No. 63 of 1952 the same petitioners prayed that a sum of Rs. 14034 should be paid to the petitioners 2 to 5 from the compensation amount deposited with the Tribunal. The first respondent in these two petitions was the zamindar, the holder of the impartible estate which was taken possession of by the Government under the provisions of the Act and respondents 2 and 3 were his minor sons represented by their mother and guardian Rani Rama Thalavachi Nachiar. The claim of the petitioners was founded on the ground that they had a charge for the amount of the claim over the entire estate of Uthumalai and Surandai under a compromise decree, to which the first respondent, the zamindar, was a party and which was

made in O.S. No. 25 of 1941, on the file of the Sub Court, Tirunelveli, on 24th March 1945, Ex.A. 38. That suit was filed by petitioners 2 to 4 who are the sons of the fifth petitioner, and one Sundaram Chettiar. Petitioners 2 to 4 were plaintiffs 1 to 3 in that suit and Sundaram Chettiar was the fourth plaintiff. The fifth petitioner was the 19th defendant in that suit and the Imperial Bank of India was the 18th defendant. The present zamindar, who is the first respondent in the petitions, was the second defendant, and his father who was then alive was the first defendant. The decree in that suit. was for a sum of Rs. 6,52,000 and out of the said sum a sum of Rs. 3,24,609-143 was to be paid to the Imperial Bank of India with interest at per cent per annum. The compromise decree declared a charge over the entire zamindari of Uthumalai and Surandai for the full amount of Rs. 6.25,000. The claim of the Imperial Bank of India, it is common ground, was subsequently satisfied. The claim, therefore, of the petitioners alone remained undischarged.

4. To appreciate the contentions between the parties it is necessary to state the background and the facts which led up to the compromise decree in O.S. No. 25 of 1941. On the 12th July 1891 Hirudalaya Marudappa Thevar, the then zamindar of the impartible estate of Uthumalai adopted a boy called Navaneethakrishna Marudappa Thevar. Hirudalaya died on 12th August 1891 and immediately after, the death of the adopted boy also followed on 16th November 1891. Hirudalaya had two wives, and in making the adoption he associated the junior wife, Meenakshi, with him, and after the death of the boy dispute to the succession to the estate arose between the two widows of Hirudalaya, each claiming to be the mother of the adopted boy. It was finally settled by the Privy Council in *Annapurni Nachiar v. Forbes* 23 Mad. 1 (P.C.) that as Meenakshi, the junior widow was associated in the adoption, she was entitled to inherit the impartible estate on the death of the adopted son in preference to the senior widow, Rani Annapurni Nachiar. Meenakshi held the estate till her death in 1921. At the time of her death the estate was under the management of the Court of Wards. After her death there were three claimants to the estate. One Subbiah Thevar claimed to be a bandhu of the last male holder entitled to succeed to the estate. Another person put forward a claim to the estate on the ground that he was the adopted son and a third person also raised a similar claim that he was the second adopted son. The result of these claims was the institution of three suits in 1922, O.S. Nos. 3, 2 and 1 of 1922 on the file of the District Court of Tirunelveli by the respective claimants. It was estimated that the value of the claim was about Rs. 8 lakhs. Subhash Thevar had no money to fight the litigation and had necessarily to approach people who were willing to finance the litigation to its successful termination. On 19th November, 1921 he entered into a financing agreement, Ex.A.69 with one Thamthaseen Taragansr, a merchant, and in onside action of Taraganar carrying out the covenants of the agreement he was promised possession of the estate together with pannai lands (private lands) for a period of 12 years after the estate was put into his possession, besides promising to give to him absolutely 50 kottahs of first class wet land in the village of Viranam

belonging to the estate to be selected by him, with the condition attached, however, that he should convert them into ryoti lands and pay Rs. 5 per acre per year. Taraganar however, disappointed Subbiah Thevar, and he was at his wit's ends to find another person to render him financial help to fight the battle to the finish. Several persons came forward, but they demanded heavy dividends and stipulated onerous conditions. Finally, on 22nd May, 1925, Ex.A-1, an agreement to finance the litigation, was entered into between Subramania Chettiar, the fifth petitioner and Subbiah Thevar. Shortly stated, the terms of the said agreement were that the financier should spend for the litigation upto a lakh of rupees till it reached the final termination in the Privy Council, and in consideration of the advance made by him he should be paid a sum of Rs. 5 lakhs as bonus over and above the one lakh of rupees and certain extents of private lands also should be handed over to him. Ex.A-1 also provided that, if it became necessary for the financier to spend more than Rs. 1 lakh, it was agreed that the excess amount so spent by him should be re-paid with compound interest at 2 per cent annum, with six monthly rests from the date of such excess expenditure. There were also other terms which would be adverted to in due course when dealing with the binding nature of the agreement. There was a supplemental agreement on 30th October, 1926, Ex.A-2, which added to the terms of the previous agreement and under which certain private lands were agreed to be given to the financier. On 3rd January 1929 the suit was decreed in favour of Subbiah Thevar, and on 11th February 1929 under Ex.A, 4 the amount due to the financier, Subramania Chettiar, was settled at Rs. 9 lakhs, which consisted of Rs. 1 lakh originally advanced, Rs. 5 lakhs promised to be paid as bonus and Rs. 3 lakhs consisting of the principal and interest on the amounts advanced by the financier over and above the amount of Rs. 1 lakh. In due course appeals were preferred against the three decisions to the High Court, When the litigation was pending in the High Court, differences arose between Subbiah Thevar and the Chettiar regarding the amounts advanced and the arrangement to be made for carrying on the appeals in the High Court and also in case there should be further appeals to the Privy Council, on such appeals. The differences at that time became very serious. Subbiah Thevar was represented by eminent Counsel, Mr. Grant and Mr. K.S. Krishnaswami Aiyangar. Mr. Grant intervened between the parties, and in order to have independent advice for the zamindar the good offices of Mr. Patanjali Sastri, as he then was, were utilised. With the advice of these three eminent Counsel a settlement was reached between the parties, which is evidenced by the agreement of 29th April, 1929, Ex.A-15. The litigation in the High Court terminated successfully in 1935, and the appeal there from to the Privy Council was also successful (1937). The decision of the Judicial Committee is reported in *Balasubramania v. Subbayya* ILR 1988 Mad. 551=47 L.W. 110 (P.C.). Under the terms of the agreement, Ex.A-15, while this litigation was pending in the High Court, certain amounts which were in deposit in Court were drawn, and Subbiah Thevar was put in possession of the estate, subject to certain conditions imposed by the High Court. The financier assigned a portion of his rights under the agreement to the Imperial Bank of India who helped him in

advancing the necessary money for the litigation. Though the financier received a portion of the amount the balance due to him was not paid by Subbiah Thevar even after the termination of the litigation in the Privy Council; and Subbiah Thevar died on 1st January, 1941. AS the financier could not recover his moneys and had assigned a portion of his rights to others it became necessary to institute a suit, O.S. No. 25 of 1941, for the recovery of the amount, and to that suit Subbiah Thevar's son, Sivagnana Marudappa Pandiap, the father of the present zamindar, was impleaded as the first defendant, and his son, the present zamindar, Navaneethakrishna Sivasubramania Hirudalaya Marudappa Pandian, as the second defendant. The Imperial Bank of India was impleaded as the 18th defendant, and the financier, Subramania Chettiar, as the 19th defendant. The suit was hotly contested and every interlocutory application in the case was brought to the High Court in revision. The trial proceeded, and the evidence of Mr. Patanjali Sastri who by then had become a Judge of the High Court, of Mr. Grant and that of Mr. Krishnaswami Aiyangar, who had also become a Judge, was recorded on commission. A number of documents were exhibited. While the examination of the financier as a witness was proceeding, wiser Counsel prevailed, and the parties thought it proper to settle the matter, and for that purpose they obtained adjournments from the Court from time to time. The trial actually commenced on 22nd December 1944. On 12th February 1945 a joint petition, Ex.A.54, was filed by both parties before the trial Judge in which it was stated that the parties were trying to settle the matter out of Court and for that purpose the parties went to Madras to consult the Imperial Bank of India and a week's adjournment was prayed for settlement. The financier who was actually under cross examination had also to go to Madras, and therefore it was put forward as an additional reason for adjourning the case for a week. On this application the suit was adjourned to 19th February 1945. On the 19th again another joint petition was filed, Ex.A.55, praying for further time which was granted by the Judge. In the affidavit in support of this application it was stated:

After a prolonged scrutiny of the various items of the claims, the details thereof, the several agreements and other documents the second defendant, the plaintiffs 18th and 19th defendants have yesterday retched an agreement as to the amount binding on the estate and payable and also what immoveable properties have to be given over as proper and reasonable performance of the agreements, having in view of the provisions of S. 4 of Act II of 1904.

By this time the first. defendant died, and the second defendant became the zamindar. On 27th February 1945, Ex.A.56 (a) another joint application was filed requesting the Court to adjourn the trial of the suit for three weeks, which was again granted by the learned Judge. The compromise was ultimately reached by the parties, and a deed of compromise dated 24th March 1945 was put into Court praying that a decree may be passed in accordance with the razinama, Ex.A.32. To this compromise the present zamindar, who was described as the proprietor of the zamindari, and also manager of the joint family, Subramanim Chettiar, the financier, his sons, plaintiffs 1 to 3 in that suit, Sundaram Chettiar

and the Imperial Bank of India were parties. The compromise sets out the facts from the beginning and also settles the amount agreed to be paid to the financier and his assignee, the Imperial Bank of India. The amount settled at a lump sum and agreed to be paid was Rs. 6,25,000 in full-quit of the money portion of the claim including costs. and that amount was to carry interest at 41/2 per cent, per annum from the date of compromise, and cut of it a sum of Rs. 3,24,605-14-3 with interest at 41/2 per cent, per annum from the date of compromise was agreed to be paid to the 18th defendant, the Imperial Bank of India and Rs. 1,44,025-15-0 with interest as 41/2 per cent per annum to Sundaram Chettiar and the balance of Rs 1,56,364-2-9 was to be said to the joint family of plaintiffs 1 to 3 and the 19th defendant, that is, the. financier. A charge was granted against the estate for these amounts. There were also a number of terms and conditions which would be adverted to in due course. In accordance with this a compromise decree followed in the suit.

5. This decree is the basis for the claim for compensation that was put forward by the petitioners in these proceedings in O.P. Nos. 63 and 64 of 1952. Under S. 42 of the Act. which provides for claims by the members of the family claiming portion of such compensation, whether by way of share or by way of maintenance or Otherwise, and creditors, whether the debts are secured or not, have to apply to the Tribunal within six months from the date on which the amount was deposited or within such time as the Tribunal may in its discretion allow. If the claim is not made within the time specified it shall cease to be enforceable. The procedure prescribed by the Act thereafter is, the Tribunal has to give notice to all persons who had applied under S. 42 and to any other persons whom it considers to be interested and should make an enquiry into the validity of the claims received by it and determine the persons, who, in its opinion, are entitled to the compensation deposited and the amount to which each of them is entitled. S. 44 provides for apportionment of compensation by the Tribunal between the principal landholder and any other person whose rights or interests in the estate stand transferred to the Government under S. 3 C. (b) or cease and determine under S. 3 Cl. (c) including persons who are entitled to be maintained from the estate and is income. The apportionment; however, should be made in accordance with the value of their respective interests. Sub S. (2) of S. 44 prescribed the mode of valuing those interests and Sub-Cl. (a) of Sub-S. (2) states that in the case of impartible estates referred to in S. 45, the valuation should be made in accordance with the provisions contained therein, and in such rules not inconsistent with that section as may be made by the Government. No rules have however been made by the Government which are applicable to the claims under S. 45. S. 45 is the section which relates to impartible estates which have to be regarded as the property of a joint Hindu family for the purpose of ascertaining the succession thereto immediately before the notified date. Though a contention was raised in the Court below that the Uthumalai estate was the separate property of Subbiah Thevar, the grandfather of the present zamindar and that S. 4 of the Impartible Estates Act had no

application, as the estate was included in the schedule to the Impartible Estates Act, the Tribunal overruled the contention and held that it was an estate governed by the Impartible Estates Act and S. 4 applied to it. The rule of devolution is that which applies to the Impartible estates which are treated for the purpose of succession as joint family estates. S. 45 of the Act therefore undoubtedly has application to the present case and no dispute was raised before us to the contrary. The case was therefore disposed of by the lower Court and must be disposed of also by us on the footing that S. 45 of the Act applies. Under Sub-S. (2) of the section the Tribunal has to determine the aggregate compensation payable to the persons enumerated in Sub-C is (a) and (b), considered each as a single group. The total amount of compensation payable to the maintenance holders shall not exceed one fifth of the remainder after deducting the amounts payable to the creditors under Sub S. (3) of the section. In other words, in disposing of the claims under S. 45 of the Act the Tribunal has to determine the creditors who are lawfully entitled to have their debts paid from and out of the assets of the impartible estate and the amount to which each of them is so entitled. After deducting this amount the balance of the total compensation is divisible among the sharers and maintenance holders; the total amount payable to the maintenance holders should not in any event exceed one fifth of the remainder after payment to the creditors. The balance of the aggregate compensation after paying the maintenance holders the one-fifth has to be divided among the sharers, as if they owned such balance as joint Hindu family and a partition thereof being effected among them on the notified date.

6. The estates notified by the Government under the provisions of the Act and taken over may be divided broadly into two classes, partible estates and impartible estates. Partible estates may be separate property of the owner or may be joint family property of which the owner is the manager and the head. In the case of latter estates, under the rules framed under the Act by the local Government by virtue of the power vested in them under S. 67 of the Act, it is provided by R. 2 that if the partible property were joint family property before the notified date the Tribunal shall determine the aggregate compensation payable. Out of the compensation payable the Tribunal should in the first instance determine the creditors who are lawfully entitled to have their debts paid from and out of the assets of the estate and the amount to which each of them is entitled. It is only the remainder of the aggregate compensation that shall be divisible among the sharers and the maintenance holders, so that if the creditor's debt is one which binds the joint family estate it will be a debt payable from and out of the assets of the estate. If it is not so payable, it could only be paid out of the share of the compensation money payable to the sharer and he has no right to proceed against the entire compensation. This is provided in S. 46. The maintenance claims in the case of a partible joint family property also has to be determined by the Tribunal as laid down by the rules. After these two classes of claims are determined, the balance of the aggregate compensation is divided among the sharers as if they owned such balance as joint family property

and a partition thereof had been effected on the notified date. The method therefore adopted in the case of partible joint Hindu family property is very clear and does not present any difficulty. In the case of impartible estates it may be the separate property of the holder or may be one which cannot be regarded as the property of joint Hindu family for the purpose of ascertaining succession, in which event S. 45 does not apply, and perhaps the procedure under S. 44 may have to be applied. But if the Impartible Estate is regarded as the property of a joint Hindu family for the purpose of succession, undoubtedly S. 45 and the procedure laid down for distribution of the compensation will apply. The creditor under S. 45 (3) of the Act has therefore to establish that he is lawfully entitled to have his debt paid from and out of the assets of the impartible estate. If he is so entitled the amount to which he is entitled has also to be determined under this clause. If the debt, whether secured or unsecured, is one which is payable out of the assets of the impartible estate, then alone is he entitled to be paid out of the total compensation amount deposited. But if it is not so payable, he cannot proceed against the entire compensation. He may be entitled only to be paid from and out of the share of the sharer who is liable to pay the debt. Considerable difficulty was felt in defining the expression ""to have their debts paid from and out of the assets of the impartible estate"". If the debt was one, whether secured or unsecured, binding on the estate within the meaning of S. 4 of the Madras Impartible Estates Act, it is undoubtedly a debt payable out of the assets of the impartible estate, and there is no difficulty in the matter. But if the debt, however, was not one which is binding on the estate under S. 4 of the Act but was binding only on the holder for the time being, could it be treated as a debt payable out of the assets of the impartible estate, in view of the fact that the holder for the time being is still alive and the Impartible Estates Act is repealed in its application to the estate as and from the notified date as provided by S. 66, and there is no question of any successor who could raise the question of the validity and binding nature of the debt on the estate at the time the claim against compensation was made by such a claimant. In view of the conclusion which we have reached in this case, as will be presently shown, it may not be necessary to answer the second question, as, in our opinion, the debt in this case is one which is binding on the estate and is payable out of the assets of the impartible zamindari. But we have heard not only Counsel appearing in the case but also the learned Advocate General of Madras and of Andhra on this question and we are indebted to them for the able assistance they rendered in the matter. On the whole, though not without hesitation, we have reached the conclusion, that even on the second question, the test to be applied to determine the validity and binding nature of the debt is to consider whether, at the time it was incurred, it could be said to be a debt binding on the estate within the meaning of S. 4 of the Act, and the fact that today when the claim against compensation is put forward the person who had incurred the debt is alive and the question of successor who could impeach the validity of the debt does not arise and makes no difference. If the debt, when it was contracted, whether secured or unsecured, could not be said to be a debt falling within S. 4 of the Act so as to

bind the estate, it could not be enforced against the compensation amount but would be payable only from out of the share of the principal landholder. The conclusion is in consonance with the scheme of the provisions of the Act and there is no reason to interpret the language applicable in the rules framed under the Act to the partible estate which is identical in terms with the language employed in S. 45 (3). The legislature should have meant to draw the line at the date on which the debt was incurred. The circumstances attendant on the date the compensation amount was claimed are not material. It must be a debt binding on the estate and must be within the provisions of S. 4 of the Impartible Estates Act in order to enable the creditor to claim the payment of the amount from out of the assets of the impartible estate. If it is binding only on the life estate holder the creditor has no claim against the estate and against the entire compensation amount deposited with the Tribunal.

7. The respondents 1 to 3, i.e., the sons of the zamindar and others. raised several contentions before the Tribunal, by which they objected to the payment of the compensation to the petitioners in the two petitions, O.P. Nos. 63 and 64 of 1952. As many as 17 issues were framed by the Tribunal and were considered by it. But most of the issues are not of the case now and the findings of the Tribunal on very many of the issues have not been challenged, and the correctness of them was not canvassed before us by Counsel on either side. We must therefore proceed to dispose of these appeals on the footing, that those findings either for or against the petitioners or respondents in the lower Court are final.

8. The findings on the issues which were not challenged before us may here be stated. On issue 8 the contention of the petitioners in the lower Court, that the Uthumalai estate was the separate property of Subbiah Thevar and that therefore the decree in O.S. No. 23 of 1941 could not be impeached by respondents 2 and 3, the sons of the present zamindar, under S. 4 of Madras Act II of 1904, was rejected, and the issue was found against the petitioners in the lower Court. In view of this finding on issue 8, issue 9 became unnecessary. On issues 10 and 11 it was found that, notwithstanding the repeal of the Impartible Estates Act by S. 56 of the Act, S. 45 of the Act imposed a duty on the Tribunal to determine the question whether the debts were binding on the estate which was impartible in the date of the notification, and therefore these issues were found against the petitioners. Issue 16 covers the plea of the respondents in the lower Court, i.e., the zamindar's sons, that a sum of Rs. 1,25,000 was paid in addition to the amount given credit to by the petitioners was disbelieved, as during the trial of the petition the fourth petitioner took a special oath in the name of God and denied the receipt of the said amount. The sum therefore was disallowed. Before the Tribunal the zamindar's sons disputed the truth and binding nature of the amounts claimed to have been spent by the financier for the purpose of the litigation. Apart from the admissions of the zamindar in the agreements, the Tribunal considered the question independently and came to the conclusion, that all the amounts were in fact spent for the purpose of litigation

apart from the sum of Rs. 5 lakhs which was included as bonus. From paragraph 32 onwards of the judgment of the Tribunal these items were considered seriatim, and it was found in paragraph 39 that the financier was able to establish before them that the entire amount claimed except a sum of about Rs. 25000 was proved to be binding on the estate, and in subsequent paragraphs 40 to 43 they also found that other items were binding on the estate. These findings of fact were not disputed before us and no argument was addressed before us as to show that the conclusion of the Tribunal was wrong. The finding must therefore be accepted as final.

9. There is also another aspect of the case which was considered in paragraph 52 of the judgment and, though pointed attention was drawn to the Counsel to the finding in paragraph 52, no attempt was made to show that the view of the Tribunal expressed therein was erroneous. In that paragraph they proceed to discuss the question, that, even if the compromise as such was not binding on the estate, as the petitioners in the lower Court were able to establish the various items of expenditure, that is the bulk of the consideration, as binding upon the impartible estate, and in respect of those items that were not binding they expressed the view, that, as the amount exceeded the amounts that had been drawn by the financier from Court, which represented the income which the holder of the impartible estate was at perfect liberty to dispose of as he pleased, that appropriation could not be challenged. Deducting the amounts so appropriated the amount claimed now before the Tribunal was much less than the amount which was found by them to be binding on the impartible estate. In this view of the matter they held that the entire amount claimed by the petitioners in the lower Court was due to them and was binding debt payable out of the assets of the zamindari, and that therefore, even if the compromise is held to be not binding on the estate, they would be entitled to the amount claimed. If, therefore, assuming that the Rs. 5 lakhs and odd, which was the bonus promised to the financier by Subbiah Thevar, was not a binding debt on the estate, and if that debt was discharged from the income of the estate by the holder for the time being, the balance that remained represented the binding debt on the estate and was much less than the amount now claimed by the petitioners. They would undoubtedly be entitled to the payment of this amount from out of the compensation. As the appellants before us, i. e., the respondents in the lower Court, did not impugn this view of the Tribunal as incorrect or erroneous, the finding must be upheld and this is sufficient to non suit the appellants.

10. Under issues 12, 13 (a) and 13 (b) it was found that there was a clear charge on the entire Jamindari in respect of the amounts claimed by the petitioners in O.P. Nos. 63 and 64 of 1952- The construction of the agreements and the decree was not again disputed before us, and therefore they must be accepted. The findings on issue 15 in paragraph 55, on issue 17 in paragraphs 56 and 58, on issue 5 in paragraph 60 and those on issues 3 and 4 were also accepted; they were not attacked before us.

11. There remain the main and principal issues on which the arguments before is were addressed by the appellants, the respondents in the lower Court. They raised only three questions. The first was that the agreements to finance were champertous and were extortionate and unconscionable and therefore did not bind the estate. The chief point of attack regarding the agreements was the provision to pay a sum of Rs. 5 lakhs by way of bonus besides giving some lands. The compromise decree in O.S. No. 25 of 1941, it was contended, did not bind the estate and was not in any event a bona fide compromise enforceable against the minor appellants, the sons of the zamindar viz., appellants 2 and 3, as the zamindar had no power to bind them by such a compromise. It was also urged that the fundamental basis of the compromise was the continued existence of the estate, and as the estate was taken over by the Government after notification under the Act, the contract evidenced by the compromise became impossible of performance or in other words, that there was frustration of the contract and therefore the compromise should not be enforced.

12. The basis of the compromise and the foundation for the suit O.S. No. 25 of 1941 were the agreements, Exs.A.1 and A. 15, entered into between the financier and Subbiah Thevar, under which the financier advanced moneys for the successful prosecution of the litigation which ended with the Privy Council judgment of 3rd December 1937 in favour of Subbiah Thevar. It must be mentioned that the agreement, Ex.A.15 of 29th April, 1929 was arrived at between the parties through the intervention and mediation and advice of eminent Counsel who appeared, and one of whom was engaged specially for the purpose of giving independent advice to the zamindar. One would have thought that that settlement could not be easily impeached. But whatever it was, when the litigation O.S. No. 25 of 1941 was going on in the Sub Court, Tirunelveli, and the trial had proceeded to a great extent, the present zamindar, after the death of his father, the first defendant in the case, took active part in the negotiations of compromise, and presumably with the advice of Counsel appearing on either side the razinama was effected. The second defendant in that suit, the present zamindar, who was eo nomine a party to the compromise, and who took active part in acquainting himself with the expenditure that was incurred for the purpose of the litigation by the grandfather, chooses to impeach the compromise as not binding on him. Whatever may be the position so far as his sons appellants 2 and 3 were concerned, the zamindar, who was a party to the compromise, cannot repudiate the compromise, and he has not pleaded or established any grounds for setting aside the compromise. The attempt on the part of the sons of the zamindar was to impeach the compromise as not being a bona fide one, and also on the ground, that their father, who was the holder of the estate, had no power to represent them in the matter of the compromise, and that therefore it was not binding. The consideration applicable for determining the binding nature of the compromise between the parties to it and to a compromise, which was sought to be made binding upon others not parties to it on the principle that the person who was a party to it represented their

interests, are no doubt different. Unless there is capacity to represent the sons and unless the compromise is a bona fide one, the sons will not be bound by the compromise entered into by the zamindar. In order to determine the bona fide nature of the compromise it is said that we must now consider independently whether the agreements entered into by the grandfather of the present zamindar were: such as could bind the estate or not, and if we reach the conclusion that they so bind the estate, then alone the compromise would be binding upon the sons of the zamindar. We do not, however, think that this to be the correct approach to the question at issue. The bona fide of the claim have to be judged upon a consideration of the respective claims put forward and the contentions urged in the suit in order to find out whether the claims were to any extent enforceable or whether they were false to the knowledge of the zamindar and the other party to the compromise. If the claim was false and false to the knowledge of both the parties, it cannot be said to be a bona fide claim. As observed by the Judicial Committee in *Ganjeswar Kunwar v. Durga Prasad Singh* 45 Cal. 17=7 L.W. 94.P.C., a dishonest claim or a claim which was fake to the knowledge of the person who entered into the compromise could not be treated as having been induced by a bona fide plea in relation to that claim. In that case Bishsmbar Prasad Singh was not born blind, and Durga Prasad Singh could not possibly have been in ignorance or in doubt as to that fact, when he induced Missamat Harbans Kunwar to inter into a compromise on behalf of the plaintiff, and therefore had no honest and bona fide belief in the claim which was made. It was therefore held,

That compromise and the decree which was made in pursuance of it could not be allowed to affect in any way the right of the minor.

(See also *Kandan Naicher v. Kandasami Gounder* 47 Mad. 161 P.C. =19 L.W. 107 where a similar principle was applied by the Privy Council), The claim against the zamindar was on the basis of agreements entered into by his grandfather. They were not contracts entered into by him, and his own action was not in dispute in the litigation of 1941. After the first contract there was the later contract of 1929, Ex.A.15. which, as observed already, was brought about with the advice of eminent Counsel appearing for the zamindar Subbiah Thevar. The only dispute in the suit related to the truth and binding nature of the amounts claimed to have been advanced by the financier. Several adjournment were obtained during the course of the trial of the suit when one of the witnesses was under cross-examination, to enable the parties to come to Madras, examine the accounts, take advice and satisfy themselves regarding the justness of the claim. Ultimately the amount was reduced and the matter was settled, as per the terms contained in Ex.A.38. There is nothing in the whole course of the proceedings to show that the zamindar, the present first appellant, acted with any ulterior motive, and that there was any lack of bona fides on his part. We are therefore in agreement with the view of the tribunal that in these circumstances the compromise was bona fide.

13. The other question is, whether the compromise decree obtained against the zamindar could bind the sons, and whether the zamindar had the capacity to represent the sons' interests in the litigation.

14. The estate was an impartible one governed by S. 4 of the Impartible Estates Act. It must be remembered that S. 4 of the Act was enacted after the first Pithapuram case, *Sri Rajah Rao Venkata Surya Mahipathi Rama Krishna Rao Bahadur v. Court of Wards* 22 Mad. 383 (P.C.), which extended the principle of *Rani Sartaj Kuari v. Rani Dasraj Kuari* 10 All. 272, that an impartible estate holder could alienate the property and that the successors had no right to question it, and that he could make a disposition under a will. Prior to *Rani Sartaj Kuari v. Rani Dasraj Kuari* 10 All. 272, the view that obtained in this Court was that the impartible estate holder was practically subject to the same restrictions regarding his power of alienation as in the case of ordinary joint family properties. It was this view that was negatived in *Rani Sartaj Kuari v. Rani Dasraj Kuari* 10 All. 272, and an unrestricted power of alienation was recognised in the holder of the estate for the time being. The power of alienation inter vivos was extended to testamentary dispositions. To restore the law it was that the legislature intervened in 1904 and passed the Impartible Estates Act which was later amended. S. 4 of the Act enacts:

4(1) The proprietor of an impartible estate shall be incapable of alienating or binding by his debts, such estate or any part thereof beyond his own lifetime unless the alienation shall be made, or the debt incurred, under circumstances which would entitle the managing member of a joint Hindu family, not being the father or grandfather of the other coparceners, to make an alienation of the joint property, or incur a debt, binding on the shares of the other coparceners independently of their consent.

15. The effect of this provision is, unless the alienation is made or the debt incurred by him in circumstances in which a manager of a Hindu joint family not being the father or grandfather could make an alienation of the property or incur a debt, the alienation or the debt does not bind the successors. After this enactment this Court held that, where the holder for the time being incurred a debt or executed a mortgage over an impartible estate governed by the Act, the successor would not be bound by any decree obtained or be liable for the mortgage, whether it be a decree after contest or compromise, as the policy of the Impartible Estates Act was to preserve the property for the family of the zamindar who had practically a life estate in the zamindari; as in such a suit the successors in title would have no opportunity of raising the question of the binding nature of the debt or the mortgage on the estate, the decree obtained against the deceased zamindar could be enforced only in a separate suit (vide *Raja Ramachandra Harischandra Deo Garu v. Akalla Venkatalakshminarayana* 37 M.L.J. 65, *Venkatalingam v. Rao Muni Venkatadri Rao* 59 Mad. 897=26 L.W. 336, *Immdipattam Bomayya Naicken Ayyan v. Subrarnania Aiyar* 46 M.L.J. 374, and also a recent decision in *Yalavarthi Gopalakrishniah Chowdhary Vs. Raja*

Kamineni Bangaru Krishnamanayunim Varu, being minor by guardian, the manager of the Chundi Estate, appointed by the Court of Wards, where the principle of *Immdipattam Bommayya Naicken Ayyan v. Subrarnania Aiyar* 46 M.L.J. 374 was applied. But in all these cases the debt or the mortgage sued on was the act of the very zamindar who incurred the debt or created the mortgage. It could not, therefore, be said that he was acting in a representative capacity so as to bind his successor in title. In the latest of the cases above cited, the learned Judges were alive to the distinction between cases, where the contract executed by the zamindar himself, was in issue, and cases, where the claim was founded upon acts other than his own. For they observed at page 250:

We should not be understood as stating that in all respects an impartible estate holder cannot represent the estate in litigation. It is only where his own acts are in question and when his borrowings are sought to be charged on the impartible property that he cannot represent the estate, so that the debt may bind the estate beyond his lifetime. Suppose, for example, there was dispute as regards portions of the zamindari with a rival landholder and the zamindar for the time being contests the suit and a decision either way is passed, such a conclusion should be binding on the succeeding zamindar on the principle of *res judicata*; or in other words, in all cases where the action of the zamindar is one that could be impugned by the succeeding zamindar it seems to us that the decree obtained against a zamindar who has himself created the debt cannot be enforced in execution against the estate after his death... The distinction between the representative capacity of an impartible estate holder for transactions entered into by him for binding the estate beyond his lifetime and that where he represents the estate in other proceedings in which he has no personal estoppel against third parties is a real one; and we are of opinion that S. 4 of the Impartible Estates Act clearly enunciates this view.

The manager of a joint family in the case of ordinary partible property represents the joint family in suits by or against the family. But where his own acts are in question, he cannot be deemed to represent the estate. That principle is not peculiar to the manager alone, but applies equally to the case of limited owners such as a widow. It is settled law ever since the *Sivaganga Case*, *Katama Nachier v. Raja of Sivaganga* 9 M.I.A. 539 that a decree *bona fide* obtained against a widow who holds a limited estate is binding on the reversioners in the absence of fraud or collusion. The case law on the subject was exhaustively reviewed by this Court in a recent decision in *Kaliammal v. Sundar ammal* ILR 1949 Mad. 171 = 61 L.W. 832 which defines the limits under which decrees obtained against a widow, whether on compromise or after contest, would bind the reversioners. But there is a clear distinction even in such cases between contracts and acts of the widow on the one hand and claims not connected with law, as tersely put by *Coutts Trotter J.* as he then was in *Tirupatiraju v. Venkayya* 45 Mad. 504, 612=51 L.W. 385 (F.B.).

I quite assent to the principle that where a widow represents the estate it would

be unreasonable to deny her the same discretion to avoid useless litigation as would be vested undeniably in a male manager. But I think that that must be subject to this qualification-which exists in the present case-that where the obligation sought to be enforced against the estate is one of her own creation, she stands in exactly the same position with regard to the justification of the compromise as she does with regard to that of her original contract, and is clothed with no higher authority and no less degree of responsibility by the accident that she has superadded to her character of a widow in possession that of a litigant. To hold otherwise, it seems to me, would be nothing less than an abrogation of compromise. I think that the rule that a widow as representing the estate can effectually settle claims arising out of the acts of others, is a salutary one-ut sit finis litium, But to give her the same power in relation to her own acts would be to make her, as it were, a judge in her own cause; she is not solely concerned with her duty to the estate, as may be supposed in the former case, but is obviously liable to a bias in favour of attempting to validate her own act. Such a conclusion would obviously deprive the reversioners of the very protection which the Hindu law endeavours to give to them; and would unquestionably lead to endless collusive compromises, as the present one may well have been. I do not think that such a conclusion has even the superficial merit claimed for it, that on its face it is a logical deduction from the fact that she has a discretion as to settling claims which do not arise out of her own acts.

We do not see any reason for not adopting and applying the same principles with reference to the holder of an impartible estate. The position of an impartible estate holder, apart from S. 4 of the Impartible Estates Act, has now been clearly established by decisions. The income is at his absolute disposal and the power of alienation is analogous to that of a manager of a joint Hindu family under S. 4 of the Impartible Estates Act. When, therefore, a claim against the estate is made in respect of acts not his own, but that of the predecessor, or even by a person claiming a hostile title to the estate, and the litigation is fought out bona fide, a decree obtained in such a suit would obviously bind the successor. It would be illogical to deny him in such a case the power to compromise the litigation for the benefit of the estate and to compel him to fight the litigation to the finish to the detriment of the estate. He should have the same kind of discretion which the manager of a joint Hindu family or the widow who inherits a limited estate possesses under the Hindu law. We, therefore, hold that the compromise evidenced by Exs. A. 38 was one entered into bona fide by the parties and the claim asserted against the estate was a bona fide one. The present zamindar who entered into the compromise had the power and capacity to represent not only himself but his successors who would take the estate after him. As we have found that the compromise is binding on the estate, it may not be necessary to examine afresh the binding nature of the arrangements of 1925 and 1929 made by Subbiah Thevar, the then holder of the estate with the financier. But however, as the Counsel for the appellants had strenuously stressed the point, it is as well that we deal with that question.

16. The background under which the first agreement of 1925 Ex.A.1 was entered into by Subbiah Thevar with the financier has already been narrated. Two principal terms of the agreement Ex.A.1 may now be stated. After reciting the prior history of the litigation and the failure of Subbiah Thevar to secure financial help and the disappointment occasioned by Tharaganar under the agreement of 1921, the terms of the arrangement are enumerated in the agreement, and they are as follows :

1. The financier was authorised as the agent to spend money on his behalf till the final Court of appeal i.e., the Privy Council-all moneys necessary for the litigation by engaging lawyers, appointing agents and clerks and obtaining documents etc;

2. A sum of Rs. 75,000 should be deposited separately without interest in the financier's shop at Madurai for the above expenses. A sum of Rs. 7500 is allowed as a lump sum fixed travelling allowance to the financier to be incurred by him till the final decision is reached in the litigation.

3. Rs. 10,000 is to be kept in deposit in the financier's firm without interest for the maintenance expenses and other incidental expenses such as traveling expenses of Subbiah Thevar etc., who could withdraw not more than Rs. 350 per month.

4. Another sum of Rs. 10,000 to be kept in deposit to meet the claims that may be made by Taraganar. These sums together make up a lakh of rupees, the receipt of which was acknowledged by Subbiah Thever.

5. In consideration of this, it was agreed to give Rs. 6 lakhs, adding R. 5 lakhs to the above Rs. 1 lakh, in consideration and as recompense for the huge profit and the permanent benefits to be derived by Subbiah Thevar as a result of the help of the financier and also for the personal exertion and the risk undertaken by him for the sum of Rs. 1 lakh agreed to be given under the agreement for the maintenance and conduct of the case. A first charge for this amount was created in favour of the financier on the entire Uthumalai zamin consisting of 55 villages.

6. If it became necessary to spend more than Rs. 1 lakh the financier should spend the same which should be repaid with compound interest at 2 per cent per annum with six monthly rests from the date of the excess expenditure. This also was secured on the zamindari. As soon as the litigation terminated the financier should be repaid the amount of Rs. 6 lakhs and as that amount carried no interest the financier should take possession of the estate and recoup himself from the income after deducting the expenses. During the period in which the financier was in possession of the estate, he should pay by way of maintenance a monthly allowance of Rs. 2000 from out of the income of the zamin. The entire income from the Pannai lands was allowed to be appropriated as no interest was payable on the sum of Rs. 6 lakhs. Liberty was given to the financier to get himself impleaded as a party to the suit or appeal whenever occasion arose. Final decision was interpreted as meaning a favourable decision in the District Court,

High Court and the Privy Council. The Financier was also empowered to transfer any of his rights under the agreement to others.

17. The question is whether this agreement was vitiated either on the ground that it was champertous or that it was extortionate and unconscionable in its terms.

18. It is settled law that the English law of champerty does not apply to India and that agreements to finance litigation are not opposed to public policy. But if such agreements are contrary to principles of equity and good conscience or unconscionable and extortionate in their terms. Courts would not enforce the agreements according to their terms. This was settled by the Privy Council in *Raghunath v. Nil Kanth* 20 Cal. 843 P.C. and very recently in AIR 1931 100 (Privy Council) the Privy Council summarised the position as follows.

It has long been held that in India agreements to finance litigation in consideration of having a share of the property if recovered are not per se opposed to public policy. They may be so if the object of the agreement is an improper one, such as abetting or encouraging unrighteous suits or gambling in litigation. or their enforcement against a party may be contrary to the principles of equity and good conscience, as unconscionable and extortionate bargains.

19. It cannot be said that this agreement tantamount to a gambling in litigation, and it was not attacked on any other ground except that the provision of a bonus of Rs. 5 lakhs and the provision to give the income of the private lands were extortionate and unconscionable. The circumstances and the difficult situation in which Subbiah Thevar was placed when he had to recover a big fortune like the estate of Uthumalai, have already been adverted to. He had to fight very heavy odds. There were as many as three litigations in respect of estate But he had not a single pie in his hands. One financier had disappointed him. Others demanded onerous terms, and it was only Subramaniam Chettiar that ultimately came to his rescue. For any amount advanced by the financier, whether the original sum of Rs. 1 lakh or excess amount as provided under the agreement he had to take the risk of losing the amount if ultimately Subbiah Thevar should fail in the litigation. Even if he succeeded the amount of Rs. 6 lakhs carried no interest and the event of getting possession of the estate was wholly uncertain on that date. The litigation actually terminated in 1937 though it was started as early as 1922, i.e., 12 year after the agreement and 15 years after the institution. There was the possibility of Rs. 1,00,000 of not earning any interest, for about 12 years. Though Subbiah Thevar succeeded in the first Court it was only after giving security the estate came into his possession. The income of the pannai lands as estimated by the Tribunal was about 22,000 per year. If interest on Rs. 6 lakhs were to be calculated at 12 per cent per annum the income of the pannai lands would be hardly sufficient to yield 3 or 4 per cent. Even if one lakh of rupees should carry interest at 12 per cent, the interest would be Rs. 12,100 per annum and the risk involved was very great. The estate was estimated to be worth Rs. 30 lakhs by one of the members of the tribunal, whereas the other put it higher.

The income of the estate was about Rs. 1 lakh. The sum of Rs. 6 lakhs would be about one sixth of the estate. What is more important is that though Subbiah Thevar and his son were all the while disputing the correctness of the amounts advanced by the financier, they never complained that this remuneration of 6 lakhs was unconscionable or extortionate. As will be shown later, without objection this amount was included in the later agreement. The financier had not only to advance the money but also had to look after the litigation by engaging vakils, keeping the records, paying the lawyers and in fact to do every thing on his behalf. He had to advance also farther sums over and above Rs. 1 lakh, and he had to take the risk as regards that amount also. He advanced nearly a sum of Rs. 4 lakhs including interest before 1929 and a further sum of Rs. 1,55,000 and odd till 1937, the interest on which come to Rs. 1,45,000 i.e., another 3 lakhs so that he spent in all a sum of Rs. 7,96,000 including interest. In view of these circumstances which were not disputed, the agreement to pay a bonus of Rs. 5 lakhs and the income from the pannai lands cannot be considered to be extortionate or unconscionable, it is futile for the sons of the zamindar now to contend after the estate was obtained that there was no necessity to borrow moneys under such terms and to complain that it was unconscionable and extortionate. There is no suggestion anywhere that the Chettiar exercised any undue influence or took undue advantage of the situation so as to extract a wring out from Subbiah Thevar unjust terms. Compared with the terms of the previous financier, undoubtedly the terms under Ex.A.1 are more favourable. There is nothing therefore, in our opinion, to hold that the terms of this agreement were either extortionate or unconscionable, and this is the only ground on which the agreement was attacked all through. What followed subsequently would emphasise that this conclusion of ours is justified.

20. The suit was disposed of in the trial Court on 3rd January 1929. On 11th February 1929 the parties looked into the accounts upto date along with the vouchers, and it was then ascertained that besides the sum of Rs. 1 lakh already advanced the financier had also advanced a further sum of Rs. 3 lakhs which included principal and interest upto date. Thus in all including the Rs. 5 lakhs agreed to be paid as bonus, the liability of Subbiah Thevar came to Rs. 9 lakhs, and this agreement was signed not only by Subbiah Thevar but also his son. No dispute was raised at the time of the settlement either that the amount advanced or the amount arrived at was not correct, nor was it contended that the bonus agreed to be paid was extortionate or unconscionable. There was also another arrangement evidenced by Ex.A.7 which is described as yadast dated 27th February 1929 which also reaffirms the accuracy of the amounts spent by the financier after scrutinising the accounts along with the vouchers, receipts, bills and chittas. The zamindar agrees under this yadast that the possession of the zamin should be obtained including the surplus cash from the District Court, Tinnevely, by the financier till all the amounts due to him under the abovesaid agreement were fully discharged. He was also given liberty to get himself impleaded if an appeal was preferred against the decision of the trial Court.

There was yet another yadast of 18th February 1929, Ex.A.8 which contains the charge on the Uthumalai zamin for the amounts due to the financier.

21. After the appeals were filed there was the agreement of 29th April 1929, which was brought about by Counsel appearing for the zamindar and the Chettiar i.e., Mr. Grant and Mr. K.S. Krishnaswami Aiyangar. Mr. Patanjali Sastri, as he then was, was appointed to give independent advice to the zamindar. This agreement sets out elaborately the fact and the circumstances under which the agreement came to be executed and acknowledges mediation by the aforesaid gentleman and it recites that the terms and conditions were fully explained to the zamindar. Under this agreement the zamindar acknowledged that he was fully satisfied of the correctness of the sum of Rs. 9 lakhs payable by the zamindar to the Chettiar. The sum of Rs. 9 lakhs was not to carry interest from 12th February 1929. The Chettiar, however, was given the income from the entire pannai lands in the zamindari from fasli 1339. Provision was made for further advances for the conduct of the appeals and it was provided that until disposal of the litigation by the final Court of appeal, the Privy Council, he should advance moneys which should carry interest at 12 per cent per annum. The Chettiar was given liberty to take proceedings to draw the amount lying with the receiver or with the Court after furnishing necessary security. There were also various other terms which it is unnecessary to refer to in detail. It also provided that the Chettiar should pay to the zamindar and his son a monthly allowance of Rs. 250 and 100 respectively for a period of one year from the date of the agreement. The Chettiar was permitted to appropriate the sum of Rs. 10000 reserved with him for payment to Thamthasin Tharaganar. This agreement was attested by the learned Counsel and there is an endorsement that the zamindar in the presence of Mr. Krishnaswami Aiyangar and Mr. Grant that the document was translated in Tamil and that it was fully explained to him and that he understood the contents. In accordance with the terms of this agreement the financier advanced several sums and the litigation ended successfully in favour of Subbiah Thevar. Subbiah Thevar died on 1st January 1941. Though he was alive for so many years no attempt was made by him to dispute the agreement on any ground on which it is now attacked.

22. Then followed the suit O.S. No. 25 of 1941 to enforce payment of the amounts due to the financier, as has been already stated. In this suit again the father of the present zamindar was a party, but he died during the pendency of the suit, and the suit was fought out by the present zamindar. All available pleas were taken, and documents to establish the claim were filed on behalf of the financier, and Messrs Patanjali Sastri, Grant and Krishnaswami Aiyangar were examined as witnesses whose depositions have been marked as exhibits in the present case. A perusal of those depositions would show that the settlement was arrived at after the zamindar examined and scrutinised the accounts along with the vouchers receipts, bills etc., and that there was no complaint by the zamindar Subbiah Thevar that the amount agreed to be paid was extortionate or unconscionable. It is during the course of the suit the parties, i.e., the present

zamindar himself and Subramania Chettiar entered into a compromise realising the fact, that it was more beneficial from the point of view of the estate to settle the matter rather than fight the litigation to its finish. As pointed out by the Tribunal, if the suit was fought out, it may be that the zamindar would have been made liable for a sum of anywhere between 11 and 8 lakhs and the amount actually agreed to be taken by the financier was Rs. 6,25000. This compromise is also a document drawn up elaborately describing the position of the zamindar as the holder of the impartible estate and also as manager of the joint family and reciting that the parties had in view the provision in S. 4 of the Impartible Estates Act and that the debt was in fact binding on the estate. It shows that the zamindar entered into the razinama not only in his individual capacity but also as representing the impartible estate of Uthumalai. It was acknowledged by him in this compromise that he was fully convinced that the interests and benefit of the family and the zemindar of the estate would be served by compromising the suit, and that in doing so he was exercising the powers under S. A of the Impartible Estates Act. The compromise, as acknowledged by him was reached after examining the binding nature of the debts in the light of the oral and documentary evidence let in upto that stage and after mutual discussions with the parties and with the help of friends and well-wishers. It is after all this that: the second defendant was convinced and satisfied that it was in the power and competence of Subbiah Thevar and first defendant to enter into the agreements and settlements so as to bind the joint family and the zamindari estate of Uthumalai. The compromise creates a charge for the amount on the Uihumalai estate. It is unnecessary to refer to all the terms of this compromise. In this compromise also the present zamindar never raised any dispute that the amount of Rs. 5 lakhs agreed to be paid to the financier after termination of the litigation was either excessive or extortionate and unconscionably. The compromise was intended to bind the estate, and the basis on which the compromise was entered into was the agreements which were brought about by the grandfather of the present zamindar, so that it was not the act of the zamindar at the time that was in issue before the suit, but it was the action of the grandfather, who borrowed moneys for bringing into existence the very estate which came into possession of the zamindar and subsequently notified by the Government under the Estates Abolition Act.

23. In view of all these circumstances, we are unable to accept the contention, that the bargain was either extortionate or unconscionable. In our opinion, the agreements are binding on the estate and the tribunal elaborately considered the binding nature of the expenses incurred by the financier and came to the conclusion, that the claimants had established its binding nature. That finding, as already stated, was not challenged before us, and not a word was said about the correctness of those findings We must therefore proceed on the footing, that those amounts were spent for litigation and for purposes binding on the estate. It therefore follows that, even apart from the compromise, the agreements entered into by Subbiah Thevar are binding on the estate. It was however faintly

argued that the amount was borrowed by Subbiah Thevar for his own benefit to obtain possession of the estate and not for the benefit of his successors or for a purpose binding on the estate. The argument has no merits. But for the amounts that were borrowed from the financier the estate itself would not have come into existence, and the argument, that he fought the litigation only for his own benefit and not for the successors, is in our opinion, purile. Having got the benefit of the estate, it is surprising that the people who are enjoying the benefits and who expect the benefits of the estate further should dispute the binding nature of the debts cent reeled for the litigation.

24. The only other point that was urged before us and which remains to be considered is the contention, that the basis of the arrangement and the compromise was the continued existence of the estate of Uthumalai, and as that estate has now been taken over by the Government the doctrine of frustration of contract must be applied to the compromise and the agreements, and it must be held that they have become impossible of performance. This argument was, in our opinion, rightly rejected by the tribunal. A perusal of the agreements and the compromise would undoubtedly establish that the liability to pay the amount was not conditioned on the continued existence of the estate. All that has provided in the said documents was the mode of discharging the debt from and out of the assets of the estate, with a charge on is Merely because the mode of discharge contemplated is not now fully available there is no reason to hold that the contract has become impossible of performance. It has now been authoritatively decided by the Supreme Court that in view of S. 56 of the Indian Contract Act, recourse cannot be had to principles of English law on the subject of frustration of contracts. If, on a construction of the contract, it is possible to conclude that there is an implied or express term according to which the contract will stand discharged on the happening of certain circumstances, the dissolution of the contract would take place on the terms of the contract itself, and there is no scope for the application of S. 56 of the Contract Act. The matter would then be governed by S. 32 of the Contract Act. However, even apart from any implied term which operates to release the parties from performance of the contract, if the real purpose of the contract was frustrated by the inclusion of occurrences of unexpected events or change of circumstances beyond what was contemplated by the parties no question of finding an implied term in such an event arises, and if the contract by reason of such circumstances became impossible of performance, S. 56 applies and it becomes void. In arriving at the conclusion, whether it became impossible, the belief, knowledge and intention of the parties are evidence, but evidence only on which the Court has to form its own conclusion, whether the changed circumstances destroyed altogether the basis of the adventure and its underlying object. The word "impossible" in S. 56 was not used in the sense of physical or literal impossibility. The performance may not be literally impossible but it may be impracticable. The section applies, unlike in the English law, to contracts relating to immovable property as well as to moveable property. In view of the principle deducible from the decision of the Supreme

Court in *Satyabarata Ghose v. Mugeeram Rangpur and Co.*, 1954 S.C.J. 1, and bearing such principles in mind, one has to consider whether the compromise in this case became impossible of performance and therefore became void. The liability of the zamindar and the estate is absolute and is not subject to any conditions. It was expected no doubt that the debt could be paid from the zamindari but notwithstanding the fact, that the compromise was entered into in 1945 the zamindar committed default in carrying out the terms of the compromise fully and therefore the balance remained due to the petitioners. The estate is now represented by the compensation money against which a statutory right is conferred upon creditors, who could establish that their debts were liable to be paid out of the assets of the zamindari. It is therefore difficult to hold that the contract became impossible of performance within the meaning of S. 56 of the Contract Act To the extent to which the compensation amount is available the statute gives an undoubted right to the creditor to be paid from the compensation amount, provided his debt was such that it could be paid out of the assets of the zamindar. We are therefore in agreement with the view taken by the tribunal that the contract did not become impossible or incapable of performance. It would therefore follow from the foregoing discussion and the findings that S.T.A. Nos. 11 and 12 of 1953 must be dismissed with costs in one S.T.A. No. 11 of 1953. There is then the appeal S.T.A. No. 10 of 1953 by the executive officer of Sri Navaneethakrishnaswami devastanam, Veerakaralampudur. The present zamindar was the trustee of this temple, and the hereditary trusteeship vested in the zamindars. A sum of Rs. 80000 representing the accumulations of the income of the villages set apart for the benefit of the temple became payable by the Court of Wards, and it was paid to Subbiah Thevar, who invested this money in certain bonds. The present zamindar, who succeeded to the estate in 1941. filed O.P. No. 1 of 1944 in the District Court, Tinnevely, for a succession certificate, and on 18th February 1947 it was granted. He obtained two bonds for the amount, one for Rs. 78000 and another for Rs. 5300 in all Rs. 83000. In July 1949 when the Government Auditor inspected the accounts and called for the bonds for verification, as they were disclosed in the property register of the temple which had to be maintained under S. 38 of the Hindu Religious Endowments Act they were not produced. A requisition was made by the Assistant Commissioner of the religious endowments upon the zamindar to produce the documents. To this, reply of the zamindar was that he had utilised the money for payment of peishkush and other obligations binding on the estate, and therefore he sent a promissory note executed by him in his individual capacity in his own favour as the trustee of the temple. The promissory note is dated 26th July 1949. A prosecution was launched against the zamindar on the ground that he had committed criminal breach of trust. He was convicted and it was confirmed on appeal. But in revision this Court set aside the conviction. The devastanam then filed O.S. No. 60 of 1951 in the Sub Court, Tinnevely, and obtained a decree for the amount against the zamindar on 1st October 1952. Under S. 6 of the Impartible Estates Act, permission of the Collector was required if money was borrowed for purpose of paying peishkush,

but that permission was not obtained. Before the tribunal the executive officer made common cause in opposing the claim of the financier, as that claim, if allowed would take away the entire amount leaving nothing to pay in the other debts. Mr. Seshachalapathi the learned Advocate for the executive officer however took up a different line of attack before us. He raised two additional contentions. Firstly he claimed as a creditor he was entitled to be paid out of the assets of the zamindari add secondly in any event as the trustee had mixed the funds of the Devastanam with his own funds he is entitled to follow the assets into the compensation amount on the principle of following trust property into the hands of the trustee or if it is converted into property to proceed against the property. The decree, which was obtained by the devastanam on the basis of the promissory note executed by the zamindar was only a personal decree against the zamindar and therefore as a creditor he could not claim that this debt was a debt binding on the estate and therefore payable out of the assets of the zamindari Further the financier had a charge over the estate, and therefore his claim has priority. On either ground, therefore, the devastanam is entitled to a priority. As regards the second point, though it was not raised in that form before the Tribunal we think it unnecessary to go into it for the simple reason, that, if he is merely claiming to follow the trust property he could not invoke that principle under the Estates Abolition Act, as the scope of the claims which could be adjudicated by the Tribunal was restricted to claims of creditors and claims of maintenance holders. He would in that event be not a creditor as understood by the Act, and his claim will be that his property was mixed with the property of the zamindar, which has now ultimately been converted into compensation money. We do not express any opinion whether the principle of following the trust property would apply to the facts of the present case. Suffice it for our purpose to hold that even on that basis he would not be a creditor and is not entitled to have the amount paid out of the compensation money. Though it is unfortunate, that the temple had lost a large amount, we regret there is no way of helping the devastanam in these proceedings. On this short ground therefore the appeal by the executive officer, S.T.A. No. 10 of 1953 must be dismissed, but in the circumstances without costs.