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Title Hindu law in Mysore

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THE HINDU LAW IN MYSORE

THE HINDU LAW IN MYSORE

AS INTERPRETED AND AMENDED BY STATUTE IN MYSORE,
TOGETHER WITH THE POSITION OF THE LAW
IN BRITISH INDIA.
CASE-LAW BROUGHT UP TO 1ST JANUARY 1943.

BY

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PREFACE

Hindu Law, as is well known, is interpreted differently in different parts of India. Mysore is no exception to that. In addition, legislative interference has affected a change in many important respects in the Hindu Law followed in the State. The Hindu Law Women's Rights Act, 1933, in particular, has conferred many rights on women in this State, which women in British India have yet to acquire. A large body of independent and illuminating judicial pronouncements of eminent Judges who have graced the Mysore High Court from time to time has also added to give a distinct colour to the Hindu Law in Mysore. Available books on Hindu Law by well-known authors do not take into account the special features of the Hindu Law in Mysore. This book is therefore primarily intended to give an idea of the Hindu Law as interpreted and amended by Statute in Mysore. Side by side with it the corresponding position of the Law as found in British India is also indicated, as far as possible, to make it more useful to a wider class of readers in and outside Mysore.

In view of the fact that the Hindu Law Women's Rights Act X of 1933 touches many important branches of Hindu Law like Inheritance, Property, Partition, Adoption, Stridhana, Women's Limited Estate, Maintenance, etc., all that pertains to those branches are dealt with while commenting upon the relevant sections of the Act. The rest, namely, the Hindu Law of Debts, Marriage, Guardianship, Management and Enjoyment of Coparcenary Property, etc., are also dealt with separately.

The usual mode of citation of cases is followed in this book, except in the case of the Mysore High Court Reports from 1896 onwards. 1 Mys. C. C. R. is denoted as 1 Mysore, 35 Mys. C. C. R. as 35 Mysore, and so on.

I am glad to express my gratefulness to Sir D'Arcy Reilly, the Chief Justice, for suggesting and encouraging me to do something of this kind which may be useful to persons interested in the subject. Readers will however pardon me if they find in this book very little that is new which I can call my own.

I am conscious of my deep indebtedness to Mr. Justice S. Venkatrangiengar, B.A., LL.M., who so kindly perused the manuscript of this book. That gave me the confidence I lacked to send it on to the press.

I am obliged to the Editorial Committee of the Mysore Law Journal for their sustained support. My thanks are also due to Mr. B. Vasudeva Murthy, B.A., LL.B., Advocate, for his unfailing courtesy and help. I also owe my heartfelt thanks to Mr. C. Lakshmana Gowda, B.A., B.L., the Advocate-General, and Mr. N. V. Narasimha Iyengar, B.A., B.L., Advocate, Bangalore.

I owe this book entirely to the generosity of my parents.

The Bangalore Press has done exceedingly well.

BANGALORE, }
9th March 1943. }

M. N. SRINIVASAN.

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HINDU LAW IN MYSORE

ACT X OF 1933

*Received the assent of His Highness the Maharaja
on the 29th day of June 1933*

**Act to amend the Hindu Law as to the Rights of Women
and in certain other respects**

CHAPTER I

Preamble.—Whereas it is expedient to amend the Hindu Law as to the Rights of Women, and in certain other respects; It is hereby enacted as follows:—

PRELIMINARY

Section 1

(1) *Short title.*—This Act may be called the Hindu Law Women's Rights Act, 1933.

(2) *Extent.*—It extends to the whole of Mysore.

(3) *Commencement.*—It shall come into force on the first day of January 1934.

SYNOPSIS

Note.—(1) Preamble; (2) Amendment in certain other respects; (3) Extent of application; (4) Hindu Law Women's Rights Act.

1. *Preamble.*—The Act among others amends the Hindu Law as to the rights of women in the following respects mainly. Part I dealing with Inheritance gives the position assigned to female heirs in the order of succession and as a necessary consequence shows also the position of the male heirs to the property of a Hindu male dying intestate.¹ The general rules as to the order of preference

Note 1.

¹ See Sec. 4 below.

among unenumerated heirs are given in Sec. 5. Part II dealing with Separate Property, Partition and Adoption provides in Sec. 8 for shares newly to certain female relatives, at a partition between coparceners; Sec. 9 deals with the presumption as to a widow's authority to adopt and the effect of an adoption on her rights in her husband's property. Part III deals with woman's full estate or Stridhana and the order of succession to stridhana property. Part IV deals with woman's limited estate and the rights and restrictions on powers of the holder of a limited estate. Part V deals with the right to maintenance of certain females, how the amount of maintenance is fixed and when it is a charge on the property liable to the claim.

2. *Amendment in certain other respects.*—In the following respects mainly the Act amends Hindu Law in matters which do not relate in the strict sense to the rights of women. Sec. 6 states what self-acquisitions by a member of a joint Hindu family shall be deemed his separate property. Sec. 7 states how a member of a joint family can effect a separation of his interest. Whether Sec. 7 enabled female members of a joint family to effect a separation of the family or not was considered in *Venkatapathiah v. Saraswathamma*.¹

3. *Extent of application.*—This Act extends to the whole of Mysore but not to the Civil and Military Station, Bangalore. The Act however does not affect all persons in Mysore or all property situate within Mysore. According to Sec. 2, this Act applies to persons who but for the passing of this Act would have been subject to the law of Mitakshara in respect of the provisions herein enacted. This Act primarily affects such persons in Mysore. The provisions of this Act which declare the rights of such persons over property, therefore, incidentally affect their property situate within Mysore and to the extent allowed by the

Note 2.

¹ 43 Mysore 361 : 16 Mys. L.J. 273, 276 ; see Sec. 7, Note 2 below.

proviso to Sec. 16 Civil Procedure Code their immovable property situate outside Mysore. It is held that in a suit for partition, family properties outside Mysore cannot be taken into calculation in equalising the shares of the parties in respect of the properties situated within Mysore.¹ But the Act will not affect immovable property even if it is within Mysore if it is owned by a person to whom this Act does not apply.

Sometimes even a person residing outside Mysore may claim rights in Mysore under this Act. For example, if a person in Mysore to whom this Act applies dies possessed of immovable property in Mysore and leaving as his nearest heir his brother's widow who is a British Indian subject in Madras, she will be entitled to succeed to the deceased's property in Mysore, even though a brother's widow according to the law in Madras is not an heir.² This is because succession to a person's immovable property is governed by the law of the country where the property is situate.³

4. *Hindu Law Women's Rights Act*.—The short title of this Act is 'The Hindu Law Women's Rights Act' and not 'The Hindu Women's Rights Act'. This suggests that the Act deals with the rights of women governed by Hindu Law and not with the rights of those women only who are Hindus. The definition of the word 'Hindu' in Sec. 3 (e) and the use of the word 'persons' instead of 'Hindus' in Sec. 2 (1) clearly show that the Act is intended to apply not only to Hindus but to persons of any other religion who are governed by the Mitakshara school of Hindu Law in relation to the matters with which this Act deals.¹ As to who are the persons governed by the Hindu Law see Sec. 2, Note 2 below.

Note 3.

¹ *Srinivasayya v. Subbarayappa*, 4 Mys. L.J. 65.

² See *Kanakammal v. Ananthamathi*, 37 Mad. 293 : 25 I.C. 901.

³ *Govt. of Mysore v. Anandaraya Mdr.*, 10 Mys. L.J. 323.

Note 4.

¹ *Sanathkumar v. Veerendra Kumariah*, 43 Mysore 534 : 16 Mys. L.J. 521, 525.

Section 2

(1) *Application*.—This Act applies to persons who but for the passing of this Act, would have been subject to the law of Mitakshara in respect of the provisions herein enacted.

(2) Save as aforesaid, nothing herein contained shall be deemed to affect any rules or incidents of the Hindu Law which are not inconsistent with the provisions of this Act.

SYNOPSIS

Note.—(1) Provisions herein enacted ; (2) Persons governed by the Hindu Law ; (3) Persons to whom Hindu Law does not apply ; (4) Sources of Hindu Law ; (5) Commentaries as a source of law ; (6) Judicial decisions as a source of law ; (7) Custom as a source of law ; (8) Essentials of a valid custom ; (9) Discontinuance of custom ; (10) Burden of proof of custom ; (11) Migration and school of law ; (12) Method of approach to Hindu Law ; (13) Extent of application of Hindu Law ; (14) Acts modifying Hindu Law ; (15) Rules not inconsistent with provisions of this Act.

1. *Provisions herein enacted*.—The provisions herein enacted relate to certain amendments to the Hindu Law as to the rights of women and in certain other respects. Properly speaking there are only two schools of Hindu Law, namely the Mitakshara school and the Dayabhaga school. The Mitakshara is a running commentary on the Code of Yajnavalkya. It was written by Vijnaneswara in the latter part of the eleventh century. The Dayabhaga is not a commentary on any particular Code, but purports to be a digest of all the Codes. It was written by Jimutavahana who is said to have flourished somewhere between the thirteenth and the fifteenth century.

The Dayabhaga is of supreme authority in Bengal. The Mitakshara is of supreme authority in other parts of India including Mysore. The Dayabhaga may also be referred to in a Mitakshara case on points on which the latter treatise is silent.¹ The large majority of the Hindus in Mysore practically form a compact group and are governed by one uniform law, namely the Mitakshara

Note 1.

¹ *Rai Bishenchand v. Asmaida Kuer*, 6 All. 560 P.C.

system² and as Chandrasekhara Iyer, C.J., observes, in Mysore the course of thought and the tenets of Hindu Law followed are more akin to those in the Madras school than anywhere else.³

2. *Persons governed by the Hindu Law*.—It is already observed that the Mitakshara is of supreme authority in Mysore. The Mitakshara law is applicable to the following persons:—

(i) not only to Hindus by birth but also to Hindus by religion, that is, converts to Hinduism,¹

(ii) to illegitimate children where both parents are Hindus,²

(iii) to illegitimate children where the father is a Christian and the mother a Hindu, and the children are brought up as Hindus. But the Hindu Law of coparcenary which contemplates the father as the head of the family and the sons as coparceners by birth with rights of survivorship, cannot from the very nature of the case apply to such children,³

(iv) to Jains⁴ and Sikhs,⁵ except so far as such law is varied by custom,

Note 1.

² *H. L. R. Committee Report*, 1930, p. 36.

³ *Dodda Moga v. Narayana Bhatta*, 2 Mys. L.J. 157, 159.

Note 2.

¹ *Jowala v. Dharam* (1865) 10 M.I.A. 511, 537; *Sheodeo Narain v. Kusum Kumari*, 1923 P.C. 21 : 71 I.C. 769 ; *Palaniappa Chetty v. Alagan Chetty*, 1922 P.C. 228 : 44 Mad. 740 ; *Kamawati v. Digbijai*, 43 All. 525, 533 P.C.

² *Ram Kumari*, in the matter of 18 Cal. 264 ; *Dattatreya v. Matha Bala*, 1934 Bom. 36 : 149 I.C. 821.

³ *Mulla's Hindu Law*, 9th edn., p. 6 ; *Myna Bae v. Ootaram* (1861) 8 M.I.A. 400.

⁴ *Sheo Singh v. Dakho*, 1 All. 688 P.C. (Adoption) ; *Chotey Lal v. Chunno Lal*, 4 Cal. 744 P.C. (Inheritance) ; *Guttappa v. Eramma*, 1927 Mad. 228 : 50 Mad. 228 ; *Jaiwanti v. Anandi Devi*, 1938 All. 62 : 59 All. 196 ; *Mari Devamma v. Jinnamma*, 10 Mys. L.R. 384 ; *Bramanayya v. Soorachetty*, 5 Mysore 45 ; *Sanathkumar v. Veerendrakumariah*, 43 Mysore 534 : 16 Mys. L.J. 521.

⁵ *Rani Bhagwan Koer v. Bose*, 31 Cal. 11 P.C.

(v) to a Hindu by birth who, having renounced Hinduism, has reverted to it after performing the religious rites of expiation and repentance,⁶ and

(vi) to Hindu converts to Christianity or any other religion, except so far as it may be inconsistent with the new religion adopted by the convert, unless the convert elects to abandon his subjection to Hindu Law. If there is no evidence of election it must be presumed that the old law continues to be applicable.⁷

Where a change of religion carries with it no obligation to submit to any particular form of law, the convert is at liberty to retain so much of his old law as is consistent with his change of status or to adopt the usages of any other class with which the new status allows him to associate himself.⁸ But in British India a person ceasing to be a Hindu in religion, cannot, since the passing of the Indian Succession Act 1865, elect to continue to be bound by the Hindu Law in the matter of succession.⁹ The decision in *Abraham v. Abraham*⁸ is thus no longer good law in British India. But in Mysore the position is different. By a notification dated 23-7-1868 all Native Christians residing in Mysore State have been exempted from the operation of that Act and hence the observations of the Privy Council in *Abraham v. Abraham* cited with approval in *Josephamma v. Muthia Setty*⁸ hold good in Mysore. The position of Indian Christians residing in Mysore is thus very much like what it was in British India before the Indian Succession Act 1865 and it is therefore held in Mysore that Adoption not being in any way inconsistent with the tenets of the Christian faith, the presumption is that the Hindu Law of Adoption is applicable to Hindu converts to Christianity in Mysore.¹⁰

Note 2.

⁶ *Kusum v. Satya*, 30 Cal. 999.

⁷ *Ramjee Rao v. Anandappa*, 29 Mysore 163 : 2 Mys. L.J. 92.

⁸ *Abraham v. Abraham* (1863) 9 M.L.A. 199, 241 ; *Josephamma v. Muthia Setty*, 16 Mysore 96.

⁹ *Kamawati v. Digbijai*, 1922 P.C. 14 : 43 All. 525.

¹⁰ *Kiritappa v. Aralappa*, 40 Mysore 267 : 13 Mys. L.J. 302.

Note.—A person who is born a Hindu and has not renounced the Hindu religion, does not cease to be a Hindu merely because he departs from the standard of orthodoxy in matters of diet and ceremonial observances or because he becomes a member of the Brahmo Samaj.¹¹

3. *Persons to whom Hindu Law does not apply.*—The Hindu Law does not apply:—

(i) to the illegitimate children of a Hindu father by a Christian mother who are brought up as Christians¹ or to illegitimate children of a Hindu father by a Mahomedan mother.² These are not Hindus either by birth or by religion. Compare (iii) in Note 2 above where the mother is Hindu but not the father,

(ii) to descendants of Hindus who have formed themselves into a distinct community or sect with a peculiar religion and usages so different from the principles of the Shastras that the community cannot but be regarded as being outside Hinduism in the proper meaning of the word,³ and

(iii) to converts from the Hindu to the Mahomedan faith.⁴ The question of succession to the estate of a convert from the Hindu to the Mahomedan faith must be decided with reference to the principles of Mahomedan Law and not of Hindu Law.⁴ Khojas and Cutchi Memons who are converts from Hinduism to Mahomedanism are however governed by the Hindu Law of succession and inheritance on the ground of custom.⁵ But in other matters they are

Note 2.

¹¹ 31 Cal. 11 P.C. ; *Ma Yait v. Maung Chit*, 1922 P.C. 197 : 49 Cal. 310, 321 ; *Mst Suraj v. Attar*, 1922 Pat. 378 : 67 I.C. 550.

Note 3.

¹ *Lingappa v. Esudasan*, 27 Mad. 13.

² *Charanjit Singh v. Amir Ali*, 1921 Lah. 121 : 2 Lah. 243.

³ See *Mulla's Hindu Law*, 9th edn., p. 7.

⁴ *Fazil Mahomed v. Venkataswamy*, 11 Mys. L.R. 406.

⁵ *Mahomed Sidick v. Haji Ahmed*, 10 Bom. 1 ; *Haji Oosman v. Haroon* 1923 Bom. 148 : 47 Bom. 369 ; *Elia Sait v. Dharanayya*, 10 Mys. L.J. 33.

governed by Mahomedan Law.⁶ As adoption is not recognised in Mahomedan Law, the presumption is that the usage of adoption recognised in Hindu Law has been abandoned by a Cutchi Memon and hence the burden is on him to prove that he has retained by usage the Hindu Law of Adoption. The Cutchi Memons in Mysore have not proved a custom of adoption among them.⁷

The Indian Act XXVI of 1937 provides that the personal law of Muslims instead of customary law shall apply to all Muslims in British India.⁸ Also Act X of 1938 (The Cutchi Memon Act) provides that all Cutchi Memons shall, in matters of succession and inheritance, be governed by Mahomedan Law. To bring the law in conformity with that in British India, a Bill identical with Act X of 1938 (The Cutchi Memon Act) has been introduced in the Mysore Legislative Council on the sixth day of July 1942.

4. *Sources of Hindu Law.—Texts*—(1) ‘The Veda, the Smriti, the approved usage,¹ and what is agreeable to one’s soul (or good conscience), the wise have declared to be the quadruple direct evidence of Dharma (law)’—Manu ii, 12.

(2) ‘The Sruti, the Smriti, the approved usage,¹ what is agreeable to one’s soul (or good conscience), and desire sprung from due deliberation are ordained the foundation of Dharma (law)’—Yajnavalkya i, 7.

(3) ‘Whatever customs, practices and family usages prevail in a country shall be preserved intact when it comes under subjection by (conquest)’—Yajnavalkya i, 343.

Note 3.

⁶ *Abdur Rahim v. Halimabai*, 32 I.C. 413 : 18 Bom. L.R. 635 P.C. ; *Advocate-General v. Jimbabai*, 41 Bom. 181 : 31 I.C. 108.

⁷ 10 Mys. L.J. 33.

⁸ See *Mulla’s Mahomedan Law*, 11th edn., p. 3.

Note 4.

¹ *Subbaramayya v. Venkatasubamma*, 1941 Mad. 513 (Sistachara or ‘practice of the virtuous’ is a recognised source of Hindu Law).

The three main sources of Hindu Dharma or Law are (1) the Sruti, (2) the Smriti and (3) Custom. The Srutis are believed to contain the very words of the deity, and they include the four Vedas. But they contain very little of law. The Smritis constitute the principle source of law. The term Dharmasastra, literally, teacher of law comprehends both Srutis and Smritis, but it is often used to designate the Smritis alone.² The three principal Smritis are :—

(i) The Code or Institutes of Manu, compiled sometime between 200 B.C. and 200 A.D.

(ii) The Code or Institutes of Yajnavalkya, written about the 4th century A.D. The Mitakshara is the leading commentary upon this Code.

(iii) The Code or Institutes of Narada, written in the 5th or 6th century A.D.²

Customs are supposed by some writers to be based on lost or forgotten Sruti, and by others, on lost or forgotten Smriti.³

5. *Commentaries as a source of law.*—The Smritis do not agree with each other in all respects. The conflict between the Smritis gave rise to the commentaries which are called Nibandhas. The commentators profess to interpret the law laid down in the Smritis. The authority of the several commentators varied in different places and thus different commentaries gave rise to different schools of law prevailing in the different parts of India. In addition to interpreting the law laid down in the Smritis, the commentators recited the customs and usages which they found in vogue around them and on this ground also their interpretations have been accepted as authoritative.¹ In the leading case of *Collector of Madura v. Mottoo Ramalinga*,²

Note 4.

² See *Mulla's Hindu Law*, 9th edn., p. 9.

³ See *G. Sarkar's 'Hindu Law'*, 7th edn., pp. 24–25.

Note 5.

¹ *Kesho Rao v. Sadashiv Rao*, 1938 Nag. 163 : (1938) Nag. 469.

² (1868) 12 M.I.A. 397, 435.

their Lordships of the Privy Council, after observing that the different commentaries had given rise to the different schools of law said that the duty of a Judge who is under an obligation to administer Hindu Law is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities (Smritis), as to ascertain whether it has been received by the particular school which governs the district with which he has to deal, and has there been sanctioned by usage. For, under the Hindu system of law, *clear proof of usage will outweigh the written text of the law.*

The commentary that is accepted as authoritative and followed in Mysore is the Mitakshara, and Smritichandrika is a work which supplements it.³ It is a happy coincidence and indeed a matter of pride to Mysore that Vijñaneswara, the celebrated commentator, should have composed his commentary the Mitakshara in Malūr, a village in Channapatna Taluk, Mysore State.⁴

6. *Judicial decisions as a source of Law.*—Judicial decisions on Hindu Law though sometimes loosely spoken of as a source of law, are not strictly a source of law. The decisions of the High Court on all important points of Hindu Law may be said to have superseded the commentaries to that extent. In fact they tend to set and crystallise the law instead of allowing it to remain fluid and adaptable.

7. *Custom as a source of Law.*—Custom is one of the three sources of law. Where there is a conflict between a custom and a text of the Smritis, the custom overrides the text. For, ‘under the Hindu system of law, clear proof of usage will outweigh the written text of the law’.¹

8. *Essentials of a valid custom.*—(1) A custom is a rule which in a particular family or in a particular district has

Note 5.

³ See *Puttaswamachar v. Ramachandrappa*, 17 Mysore 1 F.B.

⁴ See “*The Hindu*”, Madras, dated 29th March 1942.

Note 7.

¹ *Collector of Madura v. Mootoo Ramalinga*, 12 M.I.A. 397, 435 ; *Vannia Kone v. Vannichi Ammal*, 1928 Mad. 299 : 51 Mad. 1.

from long usage obtained the force of law. It must be ancient, certain and reasonable, and being in derogation of the general rules of law must be construed strictly.¹

(2) It is further essential that it should be established to be so by clear and unambiguous evidence, for it is only by means of such evidence that the court can be assured of its existence and of the fact that it possesses the conditions of antiquity and certainty on which alone its legal title to recognition depends.²

(3) It must not be opposed to morality or public policy or to any express enactment of the legislature.³

Custom binding inheritance in a particular family, that is, family custom, has been recognised in India.⁴ Where a custom is repeatedly brought to the notice of the courts, the courts may hold that the custom was introduced into the law, without the necessity of proof in each individual case.⁵ Otherwise if only a limited number of instances are brought to the notice of a court in a case, the decision in such a case would not be a satisfactory precedent in any future case between other parties.⁶

9. *Discontinuance of custom.*—A family usage or a local custom must be certain, invariable and continuous. But it may be discontinued so as to let in the ordinary law. The discontinuance will have the effect of destroying the custom. But it is different in the case of a local custom

Note 8.

¹ *Hurpershad v. Sheo Dayal* (1876) 3 I.A. 259, 285.

² *Ramalakshmi v. Sivanatha* (1872) 14 M.I.A. 570, 585; *Rupchand v. Jambu Prasad*, 32 All. 247, 252 P.C.; *Abdul Hussain v. Bibi Sona*, 45 Cal. 450; 43 I.C. 306 P.C.; *Bhikabai v. Manilal*, 1930 Bom. 517; 54 Bom. 780.

³ *Vannia Kone v. Vannichi Ammal*, 51 Mad. 1; 108 I.C. 760.

⁴ 45 Cal. 450, 460 P.C.

⁵ *Rama Rao v. Raja of Pittapur*, 1918 P.C. 81; 41 Mad. 778; *Benarsidas v. Sumat Prasad*, 1936 All. 641; 54 All. 1019; *Hemendranath Roy v. Jnanendra*, 1935 Cal. 702; 63 Cal. 155.

⁶ *Chimanlal v. Harichand*, 40 Cal. 879, 890 P.C.; *Purshottam v. Venichand*, 1921 Bom. 147; 45 Bom. 754, 760.

which is the *lex loci* binding on all persons within the local limits in which it prevails.¹

10. *Burden of proof of custom.*—Where members of a family governed by the Hindu Law set up a custom derogatory to that law, the burden lies upon them to prove the custom.¹ It is different however in the case of a family which were not originally Hindus and have only adopted Hindu usage in part.²

11. *Migration and school of Law.*—*Prima facie* any Hindu residing in a particular province of India is held to be subject to the particular doctrines of Hindu Law recognised in that province.¹ This law is not merely the local law. It becomes the personal law and part of the status of every family which is governed by it.² Consequently where any such family migrates from one province to another the presumption is that it carries with it its own personal law, that is, the laws and customs as to succession and family relations prevailing in the province from which it came.³ Hence if they allege that they have adopted the laws and usages of the province to which they have migrated, the burden is on them to prove it affirmatively and rebut the presumption that they carry with them their personal law.⁴

Note 9.

¹ *Rijkishen v. Ramjoy*, 1 Cal. 186, 196 P.C. ; *Sarabjit v. Indrajit*, 27 All. 203 ; *Vannia Kone v. Vannichi Ammal*, 1928 Mad. 299 : 51 Mad. 1.

Note 10.

¹ *Chandika Baksh v. Muna Kuar*, 24 All. 273 P.C. ; *Sheodeo Navain v. Kusum Kumari*, 1923 P.C. 21 : 71 I.C. 769.

² *Fanindra Dey v. Rajeswar*, 11 Cal. 463, 476 P.C. ; *Mahomed Ibrahim v. Sheik Ibrahim*, 1922 P.C. 59 : 45 Mad. 308.

Note 11.

¹ *Ramdas v. Ramchandra*, 20 Cal. 409.

² See *Mayne's Hindu Law*, 8th edn., Para 48.

³ *Surendranath v. Heramonee* (1868) 12 M.I.A. 81 ; *Keshav Rao v. Sadashiv Rao*, 1938 Nag. 163.

⁴ *Mailathi v. Subbaraya*, 24 Mad. 650 ; *Parbati v. Jagdish*, 29 Cal. 433 P.C. ; *Abdurrahim v. Halimabai*, 18 Bom. L.R. 635 : 32 I.C. 413 P.C. ; *Basant Kumar Basu v. Ram Shankar Roy*, 1932 Cal. 600 : 59 Cal. 859.

It is the law in force in the province at the time of their leaving it which continues to govern the migrated members until renounced. Thus they are affected by decisions of the courts of their province of origin which declare the correct law of the province up to the time of their leaving it, but not by customs incorporated in its law after they have left it.⁵ Statutory modifications of the law as to succession and family relations in force in the province at the time of migration, also continue to govern them. Thus if a Hindu to whom this Act applies migrates to the Civil and Military Station, Bangalore, the rules of succession under this Act continue to apply to him.

12. *Method of approach to Hindu Law.*—The rules of Hindu Law, it is said, are an admixture of morality, religion and law and it is not often easy to determine where religion ends and morality or law begins. All the same they are not a collection of haphazard or illogical rules. Recently, while considering the question of the termination of a Hindu widow's power to adopt, Reilly, C.J., observed : ' Some of the discussions on Hindu Law in this and other connections seem almost to proceed upon the assumption that Hindu Law is a collection of haphazard rules, in the development, application and interpretation of which reason has no part. But there is no more justification for approaching questions of Hindu Law in that spirit than questions involved in the application of any other system of law.'¹ In another case the learned Chief Justice observed that ' Hindu Law like any other existing system of law to be enforced in our courts must be applied to the society and human developments of to-day. We cannot when we have to apply it, imagine that we are back in days of antiquity. if a Hindu father in these days makes use of the machinery of the Negotiable Instruments Act, neither he nor his sons can escape the legal

Note 11.

⁵ *Balwant Rao v. Baji Rao*, 1921 P.C. 59 : 48 Cal. 30.

Note 12.

¹ *Shankaramma v. Krishna Rao*, 43 Mysore 415 : 16 Mys. L.J. 376, 388.

consequences by suggesting that they arise from machinery invented long after the rules of Hindu Law as set out in texts and commentaries of early days'.²

13. *Extent of application of Hindu Law.*—The power of the courts in Mysore to apply the Hindu Law to the Hindus is derived from and regulated by the Acts of the State Legislature. Sec. 17 Civil Courts Act I of 1883 and Sec. 11 High Courts Act I of 1884 which are similar in effect state that where in any suit or proceeding it is necessary to decide any question regarding Succession, Inheritance, Marriage or Caste or any religious usage or institution, the Hindu Law where the parties are Hindus or any custom (if such there be) having the force of law and governing the parties or property concerned shall form the rule of decision, unless such law or custom has by legislative enactment been altered or abolished, and in cases where no specific rule exists, the court shall act according to justice, equity and good conscience. As to how in British India the term 'justice, equity and good conscience' came to be treated as the equivalent of English Law see the undermentioned.¹

14. *Acts modifying Hindu Law.*—The Hindu Law has been modified and supplemented in certain respects by the following Acts :

(i) *The Mysore Infant Marriages Prevention Act X of 1894.*—This Act prevents the marriage of infant girls in Mysore (see Appendix I).

(ii) *The Guardians and Wards Act V of 1911.*—This Act applies to Hindus where a guardian has to be or has been appointed by the court for a ward.

(iii) *The Native Convert's Marriage Dissolution Act XXI of 1866.*—Extended to Mysore before Rendition by

Note 12.

² *Narasinga Setty v. Viswanathiya*, 43 Mysore 661 : 17 Mys. L.J. 47, 53.

Note 13.

¹ Sir George Rankin's Paper on Personal Law in the *Journal of the Royal Society of Arts*, May 1941.

Government of India Notification No. 58 I. J. Judicial.—This Act enables a Hindu convert to Christianity to obtain a dissolution of marriage under certain circumstances.

(iv) *The Succession Certificate Act VII of 1911*.—This Act facilitates the collection of debts on successions and affords protection to parties paying debts to deceased persons.

(v) *The Probate and Administration Act VI of 1914*.—This Act makes provision for the grant of probates of wills and letters of administration to the estate of certain deceased persons.

(vi) *The Transfer of Property Act IV of 1918 as amended by Act XVI of 1938*.—This Act supersedes the Hindu Law as to transfer of property except as provided in Secs. 2 and 129.

(vii) *The Hindu Law Women's Rights Act X of 1933*.—This Act enlarges the rights of women in property and amends Hindu Law in certain other respects.

(viii) *The Hindu Inheritance (Removal of Disabilities) Act V of 1938*.—This Act removes certain disabilities which excluded certain persons governed by Hindu Law from inheritance and a share on partition (see Appendix II).

(ix) *The Mysore Widows Remarriage Act XII of 1938* (see Appendix III).—This Act removes all legal obstacles to the marriage of Hindu widows in the State. The corresponding Act in British India came into force in 1856.

(x) *Act for the Removal of Religious and Caste Disabilities, Act XV of 1938* (see Appendix IV).—According to Hindu Law, if a Hindu renounced his religion or was deprived of caste, or was excluded from that religion, such renunciation, deprivation or exclusion entailed a forfeiture of his rights of inheritance, etc. For instance, where a Hindu father became a convert to Christianity, he was held not entitled to the custody of his Hindu children.¹ This

Note 14.

¹ *Dasappa v. Chikkamma*, 17 Mys. L.R. 324 F.B.

Act is designed to remove certain disabilities arising from change of religion or deprivation of caste whatever his or her religion or caste may be. The corresponding Act in British India came into force in 1850 nearly a century ago.

(xi) *The age of majority*.—There is no express legislative enactment in Mysore as to the age of majority corresponding to the Indian Majority Act 1875. Still the view that majority is attained only on the completion of the Eighteenth year has been so uniformly and unquestioningly acted upon by the courts in Mysore that it is too late now to reconsider it, unless of course any particular age of majority is laid down in special enactments.²

(xii) *The Indian Contract Act 1872* as extended to Mysore supersedes the Hindu Law of Contracts. But the rule of Damdupat by which interest exceeding the amount of the Principal cannot be recovered at any one time, is however not superseded by the Act.

Damdupat.—The rule of Damdupat does not divest rights which have accrued. It merely limits accruing rights.³ Thus payments made on account of interest before suit cannot be taken into account.⁴ The rule of Damdupat can only be enforced when the debtor is a Hindu, and a Mahomedan debtor cannot enforce it against his Hindu creditor.⁵

(xiii) *The Indian Evidence Act* as in force in Mysore supersedes the Hindu Law of Evidence.⁶

(xiv) *The Indian Penal Code* as in force in Mysore supersedes the Hindu Criminal Law.

Note 14.

² *Siddappa v. Seshadri*, 18 Mysore 79 ; *Govt. of Mysore v. Anandaraya Mdr.*, 10 Mys. L.J. 323.

³ *Krishnappa v. Raghavendrachar*, 15 Mysore 195.

⁴ *Venkatarangiah v. Appajian*, 7 Mysore 61.

⁵ *Ahmed Sab v. Lakshmana Setty*, 11 Mys. L.J. 480 ; *Ali Saheb v. Shahji*, 21 Bom. 85 ; see also *Maha Maya v. Abdur Rahim*, 1937 Cal. 752 : (1937) 1 Cal. 450.

⁶ See Article on "The Law of Evidence in Ancient India" in (1941) 1 M.J.J. 80.

(xv) *The Mysore Limitation Act* supersedes the Hindu Law of Limitation (see Appendix V).

15. *Rules inconsistent with provisions of this Act.*—Any rule or incident of Hindu Law which is inconsistent with the provisions of this Act will be deemed to be no longer law. The provisions of this Act will prevail and will be the rule of guidance in those cases. Thus the order of succession to a Hindu male is as given in Sec. 4 and not the order that prevailed before this Act came into force. But this Act does not amend and modify all the various rules and incidents of the Hindu Law. Hence Sub. Sec. (2) says that rules or incidents of the Hindu Law which are not inconsistent with the provisions of this Act shall be deemed to remain unaffected by this Act. The rules and incidents of the Hindu Law regarding the rights of enjoyment of coparcenary property by coparceners, the manager's powers therein or the law of debts, are all not inconsistent with the provisions of this Act and so they remain unaffected as before. So also the rules of the Hindu Law of Marriage and Guardianship during minority.

Section 3

Interpretation clause.—In this Act, unless there is anything repugnant in the subject or context—

(a) “agnate” means a relative connected by an unbroken line of male descent from a common ancestor, and includes a female related to an agnate by marriage;

(b) “ancestor” includes three generations, male or female, in ascent from the same person;

(c) “cognate” means a relative connected by a line of descent from a common ancestor broken by one or more female links, and includes a female related to a cognate by marriage;

(d) “full estate” means the sum total of the rights exercisable over any property, including the power of unfettered disposal *inter vivos* and by will;

(e) “Hindu” means a person governed by the Mitakshara School of Hindu Law;

(f) “issue” includes three generations, male or female, in descent from the same person ;

(g) “last full owner” means the person in whom the full estate in any property was last vested at the time of his or her death ;

(h) “limited estate” means any estate other than a full estate ;

(i) “next reversioner” includes, where the next reversioner is a female, also the next male reversioner, and, where there are more reversioners than one, the whole body of reversioners next entitled to the reversion at any given time ;

(j) “propositus” means the person whose relatives are to be reckoned ;

(k) “relative” means a person connected either by blood, that is to say, through descent from a common ancestor, or by marriage with a person connected by blood.

SYNOPSIS

Note.—(1) Cl. (a) Agnate ; (2) Cl. (c) Cognate ; (3) Cl. (d) Full estate ; (4) Cl. (e) Hindu ; (5) Cl. (g) Last full owner ; (6) Cl. (h) Limited estate ; (7) Cl. (i) Next reversioner.

1. *Cl. (a) Agnate.*—According to the definition, a person and his Gotraja Sapindas, Samanodakas and their wives are agnates. A female and her male relatives like brother, paternal uncle, son’s son, etc., and their wives are also agnates. Similarly a female and her relatives like brother’s daughter, sister, son’s daughter, paternal uncle’s daughter, etc., are agnates. They are connected by an unbroken line of male descent. Their connection is not broken by any female link.

2. *Cl. (c) Cognate.*—Two persons are cognates of each other if the connecting link between them is broken by one or more female links. Thus a person and his or her daughter’s son, sister’s son, mother’s sister’s son, daughter’s daughter, etc., are cognates of each other. So also a person and his or her daughter’s son’s wife, sister’s son’s wife, mother’s brother’s wife, etc., are cognates.

3. *Cl. (d) Full Estate.*—This means the sum total of all the rights exercisable over property. Thus a male has a full estate in property inherited by him. A female has a full estate in property inherited from a male relative in some cases given in Sec. 10. 2. g. According to the definition in this clause, a coparcener has no full estate in the coparcenary property because he cannot dispose of it by will, except in some cases with the concurrence of the other coparceners.

4. *Cl. (e) Hindu.*—‘Hindu’ means a person governed by the Mitakshara school of Hindu Law. It does not mean only a person belonging to the Hindu religion. As to who are the persons governed by the Mitakshara school of Hindu Law, see Sec. 2, Note 2 above.

5. *Cl. (g) Last full owner.*—One who inherits property and takes a full estate in it becomes a fresh stock of descent with regard to that property. If he or she dies intestate possessed of it, the property descends to his or her heirs according to the order in Sec. 4 or Sec. 12 respectively. A female who inherits only a limited estate in any property will not be a full owner of it and on her death it will pass not to her heirs but to the heirs of the last full owner. But with regard to property she inherits as her Stridhana she becomes a full owner and a fresh stock of descent.

6. *Cl. (h) Limited estate.*—This is defined as any estate other than a full estate. A ‘woman’s estate’ is a limited estate. The Act in Part IV appears to deal only with one kind of limited estate namely ‘woman’s estate’.¹ See also Sec. 16, Note 3.

7. *Cl. (i) Next reversioner.*—The heirs of the last full owner who would be entitled to succeed to his estate on the death of a widow or other limited heir, if they be

Note 6.

¹ See the Author’s article on “Limited Estates” in 19 Mys. L.J. 38.

then living, are called reversioners. A reversioner may be a male or a female.¹

Where a person dies leaving his widow, daughter and daughter's sons, the widow takes a limited estate in the inheritance ; the daughter and the daughter's sons constitute together the ' next reversioners ' and not the daughter alone. Where a person dies leaving his widow, daughter's sons and brothers, the widow takes a limited estate in the inheritance and the ' next reversioners ' will be the whole body of daughter's sons alive at any given time. It will be seen in such a case that though the deceased's brothers are no doubt reversioners, they are not ' next reversioners ' so long as any daughter's son of the propositus exists.

Note 7.

¹ *Moniram v. Keri Kolitani*, 5 Cal. 776, 789 P.C. ; *Sham Sundar v. Achan Kunwar*, 21 All. 71 P.C.

CHAPTER II

GENERAL PRINCIPLES OF INHERITANCE

SYNOPSIS

Note.—(1) Modes of devolution of property ; (2) Inheritance cannot be in abeyance ; (3) Doctrine of representation ; (4) *Spes-successionis* ; (5) Co-heirs ; (6) Tests of heirship ; (7) Exclusion from inheritance.

1. *Modes of devolution of property.*—The Mitakshara recognises two modes of devolution of property, namely, survivorship and succession. The rule of survivorship applies to joint family property. The rules of succession apply to property held absolutely, that is, to the separate property of the owner. Where the deceased was at the time of his death a member of an undivided family, technically called a coparcenary, his undivided interest in the coparcenary property devolves on his coparceners by survivorship. In the following three cases a person's property will pass by succession to his heirs according to the order given in Sec. 4 :—

(1) Where the deceased was separate, at the time of his death, from his coparceners, the whole of his property however acquired,¹

(2) Where the deceased was at the time of his death the sole surviving member of a coparcenary, the whole of his property including the coparcenary property,² and

(3) Where the deceased was joint at the time of his death, if he has left self-acquired property or separate property, such property goes to his heirs by succession and not to his coparceners by survivorship.³

Note 1.

¹ *Doorga Prasad v. Doorga Kunwari*, 4 Cal. 190, 202 P.C.

² *Nagalutchmee v. Gopoo Nadaraja* (1856) 6 M.I.A. 309.

³ *Katama Natchiar v. Raja of Sivaganga* (1863) 9 M.I.A. 543 ; *Periaswamy v. Periaswamy* (1878) 1 Mad. 312 P.C.

Even where the deceased was reunited at the time of his death, his property will pass to his heirs by succession, and not by survivorship,⁴ but the order of succession is not the same as that prescribed in Sec. 4.⁵

2. *Inheritance cannot be in abeyance.*—On the death of a Hindu his nearest heir becomes entitled at once to the property left by him. The right to succession vests in him immediately on the death of the owner. It cannot remain in abeyance in expectation of the birth of a preferable heir,¹ where such heir is not conceived at the time of the owner's death.

Once the estate is vested in the nearest heir at the time of the owner's death, it cannot be divested except by the birth of a nearer heir such as a son or a daughter who was conceived at the time of his death,² or by adoption in certain cases of a son to the last owner.³ Also where a person is excluded, from inheritance by reason of a disability, the subsequent recovery of the disqualified person or the birth of a qualified son to him will also divest the estate vested in the nearest qualified heir at the time of the owner's death,⁴ for, the effect of the disability being only to suspend and not to extinguish the rights of inheritance, effect must be given to the express texts of the Hindu Law which allow such a

Note 1.

⁴ *Venkatramanappa v. Muniswamy*, 1 Mysore 82.

⁵ See *Sarkar's Hindu Law*, 7th edn., p. 587 ; *Smritichandrika*, Chap. XII ; 1 Mysore 82.

Note 2.

¹ *Sakuntala Devi v. Kaushalya Devi*, 1936 Lah. 174 : 17 Lah. 356 ; *Gadadhar Mullick v. Off Trustee of Bengal*, 1940 P.C. 45 : 187 I.C. 108.

² *Bayava v. Parvatava*, 1933 Bom. 126 : 144 I.C. 442 ; 1940 P.C. 45.

³ *Bamandas v. Tarinee* (1858) 7 M.J.A. 169, 184, 206 ; *Narasimha v. Veerabhadra*, 17 Mad. 287 ; *Hira v. Buta*, 1920 Lah. 160 : 56 I.C. 256.

⁴ *Krishna v. Sami*, 9 Mad. 64 F.B. ; *Amritavalli Ammal v. Vallimayil Ammal* (1942) 2 M.L.J. 292 F.B. (the affliction merely prevents the enjoyment of right while affliction lasts) ; *Krishnamachar v. Srinivasa Raghavachar*, 17 Mysore 25 (case of non-congenital insanity).

Contra.—*Bapuji v. Pandurang*, 6 Bom. 616 ; *Powadevva v. Venkatesh*, 32 Bom. 455 ; see also *Mayne's Hindu Law*, 10th edn., p. 553.

resumption to take place, although by doing so the other principle of Hindu Law namely that property once vested cannot be divested may be contravened.⁵

Illustrations.—(1) *A* dies leaving a widow who is pregnant at the time of his death. Two months later the son is born. The point of time at which the widow's estate is divested is the date of the son's birth and not the date of her husband's death.

(2) *A* dies leaving a son *B* who is insane at that time but not from his birth, and a brother *C*. The son *B* cannot inherit and hence the property is inherited by *C* (before 1938). A son *D* is born to *B* subsequently. *D* is a nearer heir to *A* than his brother *C*. Whether *D* was conceived at the time of *A*'s death or not he will take the inheritance by divesting *C* of it. But in British India *D* cannot divest *C* unless *D* was conceived at the time of *A*'s death.

If *B* is cured of his insanity, *B* will be entitled to divest *C* and take the estate.

3. *Doctrine of representation.*—A son, a grandson whose father is dead and a great-grandson whose father and grandfather are both dead, all succeed simultaneously as one heir to the separate property of their paternal ancestor. The reason is that the grandson represents the right of his father to a share and the great-grandson represents the right both of his father and grandfather. This doctrine of representation does not apply to any other case.¹ Thus, suppose *A* dies leaving a brother *B* and a nephew *C* being the son of a predeceased brother *D*. On *A*'s death *B* takes the whole estate to the exclusion of *C*. *C* cannot claim to represent *D* and get half the estate which *D* would get if he were alive. The right of representation is confined to the lineal male descendants of a deceased owner.

The same rule of representation which applies to the descent of separate property applies also to the devolution of the self-acquired property of the deceased owner. If a different

Note 2.

⁵ *P. S. Krishna Rao J.* in 17 Mysore 25, 33 ; see also (1942) 2 M.L.J. 292 F.B.

Note 3.

¹ *Marudayi v. Doraiswami*, 30 Mad. 348 ; *Mst. Lorandi v. Mst. Nihal Devi*, 1925 Lah. 403 : 6 Lah. 124 (case of daughters).

rule is to be applied to the descent of self-acquired property, those who contend for that proposition must make it out.²

4. *Spes successionis*.—The right of a person to succeed as an heir on the death of another is a mere *spes successionis*, that is, a bare chance of succession. It is not a vested interest. It cannot be transferred and any agreement entered into in respect of the inheritance cannot bind persons who actually inherit when the succession opens.¹

5. *Co-heirs*.—The position at present in British India and the position in Mysore before this Act X of 1933 came into force was as follows :—

According to the Mitakshara Law, two or more persons inheriting jointly take as tenants-in-common¹ except in the following four cases where they take as joint tenants with rights of survivorship :—

(1) Two or more sons, grandsons and great-grandsons succeeding as heirs to the separate property of their paternal ancestor² ;

(2) Two or more grandsons by a daughter who are living as members of a joint family, succeeding as heirs to their maternal grandfather³ ;

(3) Two or more widows succeeding as heirs to their husband⁴ ; and

Note 3.

² Katama Natchiar's case ; *Thimmiah v. Narayanappa*, 42 Mysore 227 : 15 Mys. L.J. 418.

Note 4.

¹ *Bahadur Singh v. Mohar Singh*, 24 All. 94 P.C.

Note 5.

¹ *Karuppai v. Shankaranarayana*, 27 Mad. 300.

² *Jogendro v. Nityanund*, 18 Cal. 151 P.C. ; *Madwalappa v. Subbappa*, 1937 Bom. 438 : 172 I.C. 184.

³ *Venkayamma v. Venkataramanayamma*, 25 Mad. 678 P.C. ; *Md. Hussain Khan v. Babu Kishva Nandan*, 1937 P.C. 233 ; *Chidambariah v. Gopaliah*, 19 Mysore 223.

⁴ *Bhagwandeem v. Myna Bae* (1866) 11 M.I.A. 487 ; *Kittamma v. Seshamma*, 43 Mysore 43 : 16 Mys. L.J. 232.

(4) Two or more daughters succeeding as heirs to their father and taking only a limited estate therein.⁵

POSITION IN MYSORE AFTER 1st JANUARY 1934

According to Sub Sec. (5) of Sec. 4, co-heirs shall among themselves take simultaneously and in equal shares (*per capita*) except the male issue of the propositus who shall take according to stock (*per stirpes*). It has been held in *Dyavamma v. Siddegowda*⁶ that co-widows inheriting their husband's property as a limited estate take as tenants-in-common without rights of survivorship. It may therefore be taken that the co-heirs in cases (2), (3) and (4) above also take as tenants-in-common without rights of survivorship.

6. *Tests of heirship*.—Under the Mitakshara Law the right to inherit arises from propinquity, that is, proximity of relationship. In *Buddha Singh v. Laltu Singh*¹ their Lordships of the Privy Council said: "It is now well settled by the decisions of this Board (*Lulloobhoy v. Cassibai*² and *Ramachandra v. Vinayak*³) that under the Mitakshara the Sapinda relationship arises between two people through their being 'connected by particles of one body' namely, 'that of the common ancestor,' in other words, from community of blood in contradistinction to the Dayabhaga notion of 'community in the offering of religious oblations'. But.....the Mitakshara while holding that the right to inherit does not spring from the right to offer oblations, does not exclude it from consideration *as a test of propinquity or nearness of blood*". Since then the principle that succession under the Mitakshara Law depends upon

Note 5.

⁵ 25 Mad. 678 P.C.; *Chattar Singh v. Hukum Kunwar*, 58 All. 291; *Vithappa v. Savitri*, 34 Bom. 510 (absolute estate in Bombay); *Govinda Rao v. Chandrabai*, 42 Mysore 144 : 15 Mys. L.J. 85 (Full estate).

⁶ 20 Mys. L.J. 359.

Note 6.

¹ (1915) 37 All. 604, 613 P.C.

² (1880) 5 Bom. 110, 121 P.C.

³ (1914) 42 Cal. 384, 405 P.C.

propinquity and not upon religious efficacy has been settled by distinct rulings of the Privy Council.⁴ It is not a maxim of the law that he who performs obsequies is heir, but that he who succeeds to the property must perform them.⁵ At best the right to offer oblations might afford one test of propinquity or nearness of blood. But it should not be elevated into a determining factor by itself, much less allowed to qualify the main principle.⁶

In *Krishnamurthi v. Subba Rao*⁷ Chandrasekhara Iyer, J., observed that consanguinous propinquity is the very corner-stone of the law of succession according to the Mitakshara. "The twin tests of consanguinity and propinquity applied with commonsense and discrimination are quite sufficient to decide most cases of contending claims of heirship. Religious efficacy as an additional or subsidiary 'test' of propinquity has really no necessary connection with the main test. It is difficult (if not impossible) of application in the case of many cognates and of female relatives generally. It is further inappropriate with regard to important sections of the population (like the Jains) to whom the Hindu Law has to be applied without any necessary relation to their religious tenets or practices."⁸

7. *Exclusion from inheritance.*—Under Hindu Law persons under some disabilities or defects were excluded from inheritance. Unchastity, physical and mental defects like dumbness, deafness, lunacy or idiocy, change of religion or loss of caste, etc., were grounds of exclusion from inheritance. The position has been modified by the Hindu

Note 6.

⁴ *Adit Narain v. Mahabir Prasad*, 1921 P.C. 53 : 60 I.C. 251 ; *Vedachala v. Subramanya*, 1922 P.C. 33 : 44 Mad. 753 ; *Balasubramanya v. Subbayya*, 1938 P.C. 34 : 172 I.C. 724.

⁵ *Venkatrama Setty v. Boregowda*, 30 Mysore 3 : 2 Mys. L.J. 183.

⁶ Cf. *Krishnamurthi v. Subba Rao*, 24 Mysore 77, 167 F.B.; see also *Ademma v. Hanuma Reddy*, 1937 Mad. 967 ; *Seshamma v. Sampath Iyengar*, 15 Mysore 303, 307 ; *Lakshmana v. Nagubai*, 18 Mysore 224.

⁷ 24 Mysore 77 F.B.

⁸ H. L. R. Committee Report, 1930, p. 55.

Inheritance (Removal of Disabilities) Act and the Act for the removal of religious and caste disabilities.¹

(i) *Unchastity*.—Unchastity of a widow at the time of her husband's death disentitles her to inherit to him.² But her becoming unchaste subsequent to her husband's estate vesting in her will not divest the estate already vested in her.³

According to the Mitakshara Law, the only female liable to exclusion from inheritance by reason of unchastity is the deceased's widow.⁴ A daughter, a mother or a sister are not excluded by reason of unchastity.⁵

Unchastity is a bar only to inheriting the property of a male, but not the Stridhana of a female.⁶

(ii) *Re-marriage*.—On the re-marriage of a widow, she loses all rights by way of inheritance to her husband or to his lineal successors.⁷

(iii) *Change of religion and loss of caste*.—After the passing of the Act for the removal of religious and caste disabilities 1938, change of religion or deprivation of caste have ceased to be grounds of exclusion from inheritance or of forfeiture of property in Mysore.⁸

Sanyasi.—A Hindu who voluntarily renounces the world and becomes a Sanyasi (ascetic) is not however affected by the caste disabilities removal Act.⁹ Thus where a Hindu

Note 7.

¹ See Appendices II and IV.

² *Moniram v. Keri Koltani*, 5 Cal. 776 P.C.

³ *Gangadhar v. Yellu*, 36 Bom. 138 : 12 I.C. 714 ; *Sellam v. Chinnammal*, 24 Mad. 441 ; see also *Lakshmichand v. Mst. Anandi*, 1935 P.C. 180 : 57 All. 672.

⁴ *Tara v. Krishna*, 31 Bom. 495 ; *Vedammal v. Vedanayaga*, 31 Mad. 100.

⁵ *Baldeo v. Mathura*, 33 All. 702 : 11 I.C. 43 (mother) ; *Ram Pergash v. Mst. Dahan Bibi*, 1924 Pat. 420 : 3 Pat. 152 (daughter).

⁶ *Angammal v. Venkata*, 26 Mad. 509 ; *Nogendra v. Benoy*, 30 Cal. 521.

⁷ Sec. 6, Act XII of 1938. See Appendix III.

⁸ See Appendix IV ; *Khunni Lal v. Gobind*, 33 All. 356 P.C. ; *Miter Sen Singh v. Maqbul Hasan*, 1930 P.C. 251 : 128 I.C. 268.

⁹ See Sec. 2, illustration (g) in Appendix IV.

renounces all worldly affairs and becomes a Sanyasi by duly performing the ceremonies necessary for entering that religious order, it will exclude him altogether from inheritance and any property belonging to him at the time of renunciation passes immediately to his heirs.¹⁰

(iv) *Physical and mental defects*.—After the passing of the Hindu Inheritance (Removal of Disabilities) Act 1938 in Mysore, a person governed by the Hindu Law shall be excluded from inheritance only if he is and has been from birth a lunatic or idiot.¹¹ Where the heir is disqualified, the next heir of the deceased at the moment succeeds as if the disqualified person were dead.¹² Act V of 1938 does not affect any right which has accrued or any liability which has been incurred before it came into force.¹³ It is held that a congenital idiot has the status of a coparcener notwithstanding that he is excluded from the enjoyment of his share and that he can lawfully marry and transmit a right of enjoyment of the family properties to his issue.¹⁴ Though a lunatic cannot claim a share at a partition of the coparcenary estate, he is entitled to succeed to it by survivorship if he finds himself the last coparcener.¹⁵

(v) *Murder*.—A murderer is disqualified upon the principles of justice, equity and good conscience, from succeeding as heir of the person whom he murdered. No title to the estate of the person murdered can be claimed through the murderer.¹⁶ The murderer cannot be regarded as

Note 7.

¹⁰ *Baldeo Prasad v. A. P. N. Sabha*, 1930 All. 643 : 52 All. 789 ; *Kondal Rao v. Swamulavaru*, 33 Mad. L.J. 63 : 40 I.C. 535.

¹¹ See Appendix II.

¹² *Baboo Bodhnarain v. Omrao* (1870) 13 M.I.A. 519.

¹³ See Sec. 3, Appendix II.

¹⁴ *Amrithammal v. Vallimayil Ammal* (1942) 2 M.L.J. 292 F.B.: 1942 Mad. 693.

¹⁵ *Bhagwati Saran v. Parmeswari Nandan*, 1942 All. 267 (2) (non-congenital) ; *Muthuswami v. Meenammal*, 43 Mad. 464 ; *Moolchand v. Chatha Devi*, 1937 A.L.J. 631 F.B. (leprosy).

¹⁶ *Kenchava v. Girimallappa*, 1924 P.C. 209 : 48 Bom. 569.

a fresh stock of descent. He must be regarded as not existing when the succession opens on the death of his victim.¹⁶ Not only is the murderer excluded but also any other person claiming heirship through him.¹⁷ Where the daughter of a last male holder murdered his widow, the daughter's son was held entitled to inherit to his maternal grandfather's estate because the daughter's son succeeds in his own right and does not claim heirship through the murderess.¹⁸

Note 7.

¹⁷ *Gangu v. Chandrabhagabai*, 32 Bom. 275 ; 1924 P.C. 209.

¹⁸ *Sihanumurthayya v. Ramappa*, 1942 Mad. 277 : (1942) 1 M.L.J. 21.

CHAPTER III
PART I
INHERITANCE

Section 4

Order of succession.—(1) The succession to a Hindu male dying intestate shall, in the first place, vest in the members of the family of the propositus mentioned below, and in the following order :—

- (i) the male issue to the third generation ;
- (ii) the widow ;
- (iii) daughters ;
- (iv) daughters' sons ;
- (v) the mother ;
- (vi) the father ;
- (vii) widows of predeceased sons ;
- (viii) sons' daughters ;
- (ix) daughters' daughters ;
- (x) brothers of the whole blood ;
- (xi) brothers of the half-blood ;
- (xii) sons' sons' daughters, sons' daughters' sons, sons' daughters' daughters, daughters' sons' sons, daughters' sons' daughters, daughters' daughters' sons, and daughters' daughters' daughters ;
- (xiii) widows of predeceased grandsons and great-grandsons.

(2) On failure of the family of the propositus, the succession shall pass to the family of the father of the propositus mentioned below, and in the following order :—

- (i) brothers' male issue to the second generation ;
- (ii) sisters ;
- (iii) half-sisters ;
- (iv) sisters' sons ;
- (v) half-sisters' sons ;
- (vi) the father's mother ;
- (vii) the father's father ;
- (viii) step-mothers ;

- (ix) brothers' widows ;
- (x) brothers' daughters ;
- (xi) sisters' daughters ;
- (xii) father's brothers of the whole blood ;
- (xiii) father's brothers of the half-blood ;
- (xiv) brothers' sons' daughters, brothers' daughters' sons, brothers' daughters' daughters, sisters' sons' sons, sisters' sons' daughters, sisters' daughters' sons, and sisters' daughters' daughters ;
- (xv) widows of brothers' male issue to the second generation.

(3) On failure of the family of the father of the *propositus*, the succession shall pass to the family of the paternal grandfather, and next thereafter to the family of the paternal great-grandfather, the members of each family ranking among themselves in the same relative order as the members corresponding to them in the family of the father.

(4) On failure of the families of paternal ancestors to the third degree as above, the succession shall pass to the maternal ancestors to the third degree and their respective families, one after the other, and under the same rules *mutatis mutandis* as to relative order within each such family as are applicable to the families of the paternal ancestors.

(5) The members (where there are more than one) of each of the groups indicated above by Roman numerals and of the groups corresponding to them under sub-sections (3) and (4) shall, among themselves, take simultaneously and in equal shares (*per capita*), provided that the male issue of the *propositus* shall take according to stock (*per stirpes*).

(6) Every reference to the son of a female relative in this section shall be read as excluding a son adopted after the death of such female relative.

Illustration.—A sister's son does not include a son adopted after the sister's death.

SYNOPSIS

Note.—(1) Scope of the section ; (2)-(i) Male issue to the third generation ; (3)-(ii) Widow ; (4)-(iii) Daughter ; (5)-(iv) Daughter's son ; (6)-(v) Mother, (vi) Father ; (7)-(vii) Widows of predeceased sons ; (8)-(viii) Son's daughter ; (9)-(ix) Daughter's daughter ; (10)-(x) and

(xi) Brothers of the whole blood and half-blood ; (11)-(xii) Son's son's daughters, son's daughter's sons, etc.; (12)-(xiii) Widows of predeceased grandsons and great-grandsons; (13) Sub Sec. (2) i. Brother's male issue to the second generation; (14) Sister, half-sister, sister's son, half-sister's son; (15) The father's mother, the father's father ; (16)-(viii) Step-mothers ; (17)-(ix) Brother's widows ; (18) Sub Sec. (3) ; (19) Sub Sec. (4) Family of the maternal ancestors ; (20) Other heirs ; (21) Sub Sec. (5).

1. *Scope of the section.*—This section gives the order in which male and female relatives of a person succeed as heirs to his property on his death intestate. The members of the family of the propositus take first in the order given in Sub Sec. (1). On failure of these heirs, the succession passes to the family of the father of the propositus in the order given in Sub Sec. (2). On failure of these, the succession passes to the family of the paternal grandfather and then to the family of the paternal great-grandfather, the members of each family ranking among themselves in the same relative order as the members corresponding to them in the family of the father of the propositus given in Sub Sec. (2). On failure of the families of the paternal ancestors to the third degree as above, the succession passes to the maternal ancestors to the third degree and their families under the same rules *mutatis mutandis* as to the relative order within each such family as are applicable to the families of the paternal ancestors, see Sub Sec. (4). Sub Sec. (5) states that co-heirs take simultaneously and in equal shares (*per capita*) except the male issue of the propositus who shall take according to stock (*per stirpes*). Sub Sec. (6) states that any reference in the section to the son of a female relative shall be read as excluding a son adopted after the death of such female relative.

The following three classes of property pass to the heirs of a person under this section:—

(1) The separate or self-acquired property of the deceased though he was joint at the time of his death,

(2) Coparcenary property vested exclusively in the deceased as sole-surviving coparcener at his death, and

(3) the whole of the property of a deceased however acquired, where he was separate from his coparceners at the time of his death.

The order of succession to the Stridhana of a female is given in Sec. 12.

2. (i) *The male issue to the third generation.*—That is, the son, grandson (son's son) and great-grandson (son's son's son).

A son, a grandson whose father is dead and a great-grandson whose father and grandfather are both dead, succeed simultaneously as a single heir. They take as joint-tenants with rights of survivorship.¹ They take according to stock (*per stirpes*). See Sub Sec. (5).

(1) *Divided and undivided sons.*—The undivided sons and their branches succeed as heirs to the whole of the separate property of the father according to the Bombay, Madras and Allahabad decisions,² the principle adopted being that an undivided son, grandson or great-grandson excludes a divided son. If there are no undivided sons, the divided sons take the estate in preference to the widow.³

In Mysore it is held following Saraswati Vilasa that divided and reunited sons inherit their father's self-acquired property equally.⁴

(2) *Illegitimate sons.*—The illegitimate sons of a Hindu belonging to one of the three higher classes, namely Brahmin, Kshatriya or Vaisya by a Dasi, that is, a Hindu concubine in the continuous and exclusive keeping of their putative father, are entitled only to maintenance and not to

Note 2.

¹ *Jogendro v. Nityanund*, 18 Cal. 151 P.C.

² *Fakirappa v. Yellappa*, 22 Bom. 101; *Vairavan v. Srinivasachariar*, 44 Mad. 499 F.B.; *Narasimhan v. Narasimhan*, 1932 Mad. 361; 55 Mad. 577; *Ganesh Prasad v. Hazari Lal*, 1942 All. 201 F.B.

³ *Ramappa v. Sitammal*, 2 Mad. 182 F.B.; *Marudayi v. Doraiswami*, 30 Mad. 348; *Chikka Kariya v. Mari Giddamma*, 12 Mysore 8.

⁴ *Hucha v. Thirumalagowda*, 16 Mys. L.R. 27.

any share of the inheritance.⁵ An illegitimate son is not an 'aurasa' son as understood in Hindu Law.⁶

The illegitimate son of a Sudra, however, is entitled to a share of the inheritance, provided (1) he is the son of a Dasi, that is, a Hindu⁷ concubine in the continuous and exclusive keeping of his father and (2) he is not the fruit of an adulterous or incestuous intercourse.⁸ He is not however entitled to full rights of inheritance. See. Mit., Chap. I, Sec. 12, verse 2. In *Kamalammal v. Viswanathaswamy*⁹ that verse was interpreted by the Privy Council and it was held that an illegitimate son takes one half of what he would have taken if he were legitimate. That is to say, if a person leaves one legitimate and one illegitimate son, the illegitimate son takes one-fourth ($\frac{1}{2}$ of $\frac{1}{2}$). If a person dies leaving one legitimate and six illegitimate sons, the illegitimate sons each take one-fourteenth ($\frac{1}{2}$ of $\frac{1}{7}$) and the legitimate son takes eight-fourteenths ($\frac{8}{14}$).¹⁰ If there is no legitimate son, but a widow daughter or daughter's son, the illegitimate son takes half and the other half goes to the widow daughter or daughter's son as the case may be.¹¹ The rights of the widow and the illegitimate sons are independent of each other and

Note 2.

⁵ Mit., Chap. I, S. 12, v. 3; *Choturva v. Sahub Purhulad*, (1857) 7 M.I.A. 18; *Roshan Singh v. Balwant Singh*, 22 All. 191 P.C.; *Hiralal v. Meghraj*, (1938) Bom. 433; *Muniamma v. Akkannamma*, 45 Mysore 311 : 19 Mys. L.J. 39 (Vaisya).

⁶ *Krishna Yachendra v. Rajeswara Rao*, 1942 P.C. 3 : 44 Bom. L.R. 551.

⁷ *Lingappa v. Esudasan*, 27 Mad. 13 (Christian woman, not a dasi); *Sitaram v. Gunpat*, 25 Bom. L.R. 429 (Mahomedan woman, not a dasi); *Ramjee Rao v. Anandappa*, 29 Mysore 163 : 2 Mys. L.J. 92; *Chikkamma v. Nanjunda*, 43 Mysore 105 : 16 Mys. L.J. 184.

⁸ *Sundararajan v. Arunachalam*, 39 Mad. 136 F.B.; *Rajani Nath Das v. Nitai Chandra Dey*, 48 Cal. 643 F.B.; *Bai Nagu Bai v. Monghi Bai*, 50 Bom. 604 P.C.; *Naga v. Bali Setty*, 1 Mys. L.R. 109; *Kempa Nanje Gowda v. Siddamma*, 2 Mys. L.R. 190; *Sivarama Gowda v. Lingamma*, 3 Mysore 65; 29 Mysore 163.

⁹ 1923 P.C. 8 : 46 Mad. 167.

¹⁰ *Maharaja of Kolhapur v. Sundaram*, 1925 Mad. 497 : 48 Mad. 1.

¹¹ *Seshagiri v. Girewa*, 14 Bom. 282; *Annayyan v. Chinman*, 33 Mad. 366; *Chikkamma v. Nanjunda*, 43 Mysore 105 : 16 Mys. L.J. 184.

one cannot meddle with the share of the other.¹² After the widow's death, the half share she took will descend to the next heir of the deceased husband and not to the illegitimate son.¹³ If there is no widow, daughter or daughter's son, the illegitimate son takes the whole estate.¹⁴

The illegitimate and the legitimate sons of a Sudra inherit their father's property as coparceners with a right of survivorship.¹⁵ The share allotted to the illegitimate son under the Mitakshara is not in lieu of maintenance. It is in recognition of his status as a son.¹⁶ His right of inheritance to his father is not merely a personal right. It passes on his death to his legitimate issue.¹⁷ The illegitimate son of a Sudra can inherit only to his father. He has no claim to inherit to collaterals, that is, to his father's legitimate sons, etc., and a collateral also is not entitled to inherit from him.¹⁸

An illegitimate son is not competent to question the right of his father to alienate his property by will. He is not entitled to rights of a coparcener with his father nor can he enforce a partition against his father in his lifetime. He can however get a share by his father's choice or at his pleasure. His right to claim one is recognised only after his (the father's) death, when his legitimate brothers effect a division of the family property.¹⁹

An illegitimate son is however entitled to inherit to his mother's Stridhana, equally and simultaneously with her other legitimate children, whether she is a Sudra or not. See Sec. 12 (1) Expln.

Note 2.

¹² 43 Mysore 105.

¹³ *Karuppaye v. Ramaswami*, 1932 Mad. 440 : 55 Mad. 856.

¹⁴ *Mit.*, Chap. I, Sec. 12, para 1 ; *Saraswati v. Mannu*, 2 All. 134.

¹⁵ *Jogendra v. Nityanund*, 18 Cal. 151 P.C.

¹⁶ *Velliappa Chetty v. Natarajan*, 1931 P.C. 294 : 55 Mad. 1.

¹⁷ *Ramalinga v. Pavadai*, 25 Mad. 519.

¹⁸ *Zipru v. Bomtya*, 1922 Bom. 176 : 46 Bom. 424 ; *Subramanya v. Ratnavelu*, 41 Mad. 44 F.B. ; *Ayiswaryanandaji v. Sivaji*, 1926 Mad. 84 : 49 Mad. 116.

¹⁹ 18 Cal. 151 P.C. ; *Siddamma v. Kullamma*, 7 Mysore 13.

(3) *Foster-son*.—A foster son does not as such obtain any rights of inheritance.²⁰

(4) *Adopted son*.—An adopted son has all the rights of a natural born son in the adoptive father's family, except where after his adoption a natural son is born to the adoptive father. See Sec. 9, Note 23 below.

3. (ii) *Widow*.—In default of the male issue a person's widow inherits his property.¹ She takes only a limited interest in it if the deceased has left a daughter or daughter's son alive at his death. If not she takes a full estate in the property. See Sec. 10 (2) (g). Before this Act came into force, widows took only a limited estate in their husband's property in all cases. Such an estate would enlarge into a full estate when this Act came into force if under the Act they would take a full estate in the inheritance.² Thus where a person died in 1883 leaving his widow who gave birth to a posthumous daughter, the widow's limited estate did not enlarge into a full estate when this Act came into force, because even under the Act she would take only a limited estate under similar circumstances.³

Two or more widows.—(A) *The position in British India all along and in Mysore prior to this Act*: Co-widows succeeding to the estate of their deceased husband and taking only a limited estate or what is technically called a 'woman's estate' will take the property as joint tenants with rights of survivorship and equal beneficial enjoyment.⁴ They take the limited estate coupled with a right of survivorship in case the other widow predeceased her. This right of survivorship

Note 2.

²⁰ *Parvatamma v. Ramanna*, 9 Mys. L.R. 126.

Note 3.

¹ *Narnappa v. Venkatanarasimha*, 4 Mys. L.R. 229.

² *Siddalingamma v. Muddumallegowda*, 40 Mysore 85 : 13 Mys. L.J. 79 ; *Govinda Rao v. Chandrabai*, 42 Mysore 144 : 15 Mys. L.J. 85.

³ *Chikkanarasappa v. Honnuramma*, 43 Mysore 181 : 16 Mys. L.J. 167.

⁴ *G. Neelamani v. G. Radhamani*, 1 Mad. 290 P.C.

is a vested interest or at least a contingent interest and not a mere *spes successionis* contemplated in Sec. 6 of the Transfer of Property Act.⁵ Hence co-widows in possession of their husband's estate are competent to convert their joint estate into estates in severalty and each of them may also dispose of or relinquish her right of survivorship to the portion of the estate held by the other.⁶ Such a relinquishment will not affect the next reversioner to the estate, unless he himself is a party to the arrangement.⁷ Though co-widows take as joint tenants, no one of them has a right to enforce an absolute partition of the estate against the others so as to destroy their right of survivorship. But they are entitled to obtain a partition of separate portions of the property so that each may enjoy her equal share of the income accruing therefrom.⁸ Each can deal as she pleases with her life-interest, but she cannot alienate any part of the corpus of the estate so as to prejudice the rights of the survivor or the next reversioner to the estate.⁹

(B) *Position in Mysore after 1st January 1934* : Sub Sec. (5) of this section has effected a change in the law in this matter. The effect of Sub Sec. (5) is that co-widows succeeding to their husband take in equal shares. That would entitle them to have their shares partitioned by metes and bounds—a position which was not permissible before this Act came into force. And as Nageswara Iyer, J., observes: 'If under the Act the widows taking their husband's estate have a right to have the estate partitioned, it must necessarily follow that the right of survivorship between them is destroyed'.¹⁰

Note 3.

⁵ *Kittamma v. Seshamma*, 43 Mysore 43 : 16 Mys. L.J. 232 ; *Appalasuri v. Kannamma*, 1926 Mad. 6.

⁶ *Meenakshi v. Subramanian*, 1930 Mad. 175 ; *Dulhin Parbati Kuer v. Baijnath Prasad*, 1936 All. 300 : 14 Pat. 518 ; *Basantkumar v. Ramshankar*, 1932 Cal. 600 : 59 Cal. 859.

⁷ 43 Mysore 43 ; *Ram Gouda v. Bhau Saheb*, 1927 P.C. 227 : 52 Bom. 1.

⁸ See *Mulla's Hindu Law*, 9th edn., p. 37.

⁹ *Bhagwan Deen v. Myna Bae*, 11 M.I.A. 487 ; *Sundar v. Parwati*, 12 All. 51 P.C. ; 1936 All. 300.

¹⁰ *Dyavamma v. Siddegowda*, 20 Mys. L.J. 359.

It follows that the share which the co-widows inherit and in which they take only a limited estate, passes on the death of either of them to the next heir at the time, of the last male owner.

The estates of the co-widows who had taken as joint tenants with rights of survivorship prior to the Act would be converted or altered into a tenancy-in-common without rights of survivorship, whether under this Act their estate enlarges into a full estate¹¹ or continues to be only a limited estate.¹²

Unchastity.—A widow who is unchaste at the time of her husband's death is not entitled to inherit to him.¹³ But once the estate is vested in her she cannot be divested of it by her subsequent unchastity.¹⁴ A widow who is not unchaste but has been cast off by her husband, does not necessarily lose her right to inherit his property on failure of male issue.¹⁵

Remarriage.—The remarriage of a widow is now legalised by the Mysore Hindu Widows Remarriage Act 1938. But all rights and interests which she may have in her deceased husband's property by way of maintenance or by inheritance to her husband or to his lineal successors, shall upon her remarriage cease and determine as if she had then died, and the next heirs of her deceased husband or other persons entitled to the property on her death shall thereupon succeed to the same.¹⁶ It is not clear as to what should happen if she inherited her husband's estate as Stridhana and has disposed of it before her remarriage.

Note 3.

¹¹ Cf. *Govinda Rao v. Chandrabai*, 42 Mysore 144 : 15 Mys. L.J. 85.

¹² 20 Mys. L.J. 359.

¹³ *Lutchmakka v. Venkatramanappa*, 7 Mys. L.R. 107.

¹⁴ *Moniram v. Keri Kolitani*, 5 Cal. 776 P.C.; *Sellam v. Chinnammal*, 24 Mad. 441.

¹⁵ *Shamanna v. Appamma*, 6 Mys. L.R. 118.

¹⁶ Sec. 6, Act XII of 1938, see Appendix III.

In Mysore it has been held that the remarriage of a Hindu widow even where she belongs to a caste in which remarriage is permissible, has the effect of putting an end to her right in her first husband's estate and of vesting that right in the next heirs of her husband.¹⁷ Madras, Bombay, Calcutta and Patna High Courts have also held the same view.¹⁸ The Allahabad High Court holds that in such a case she does not forfeit by remarriage her right in her first husband's estate, unless it is proved that the custom also involves such forfeiture.¹⁹ In Mysore a widow by remarriage loses her right to succeed even to the estate of her son or daughter by the first husband or to any of his lineal successors.²⁰ But in British India she does not lose her right to succeed to the estate of her son or daughter by her first husband.²¹

Widow and divided step-son.—Where a widow claimed to succeed to her husband's property in preference to her step-son who had become divided during her husband's lifetime, it was held that the divided son was entitled to succeed in preference to the widow and that a widow can succeed only when her husband dies sonless.²²

4. (iii) *Daughters.*—Under the Mitakshara Law an unmarried daughter was preferred to a married daughter and a married daughter who was indigent to one who was married and enriched.¹ After this Act came into force, all daughters,

Note 3.

¹⁷ *Soobappa v. Vencamma*, 3 Mys. L.R. 239; *Setty Gowda v. Maka*, 13 Mysore 70.

¹⁸ *Murugayi v. Viramakali*, 1 Mad. 226; *Vithu v. Govinda*, 22 Bom. 321 F.B.; *Suraj v. Attar* (1922) 1 Pat. 706; 67 I.C. 550; *Santala v. Badaswari*, 50 Cal. 727.

¹⁹ *Bola Umar v. Kausilla*, 55 All. 24; 140 I.C. 631 F.B.; *Md. Abdul Samad v. Girdhari Lal*, 1942 All. 175.

²⁰ Sec. 6, Act XII of 1938, see Appendix III.

²¹ *Basappa v. Rayava*, 29 Bom. 91 F.B.; *Lakshmana v. Siva*, 28 Mad. 425; *Kundan v. Secretary of State*, 1926 Lah. 637; 7 Lah. 543.

²² *Chikka Kariya v. Mari Giddamma*, 12 Mysore 8.

Note 4.

¹ *Bayava v. Parvatava*, 1933 Bom. 126; 144 I.C. 442; *Rajrani v. Gomati*, 1928 Pat. 466; 7 Pat. 820 *Manki v. Kundan*, 1925 All. 375; 47 All. 403.

married or unmarried, enriched or unprovided for or widowed, all take equally and simultaneously. A daughter takes a full estate in the inheritance if her father has no daughter's son alive at the time she inherits the estate.²

Two or more daughters.—The nature of the estate taken by two or more daughters succeeding as co-heirs to their father is similar in all respects to the nature of the estate taken by two or more widows succeeding as co-heirs to their husband.³ Hence see the comments in Note 3 above, under heading 'Two or more widows'.

After 1st January 1934 whether they take a full estate⁴ or a limited estate⁵ in the inheritance, they take as tenants-in-common without rights of survivorship. When they take a full estate, the share taken by each passes on her death to her own heirs in the order prescribed in Sec. 12.⁶ When they take only a limited estate, the share taken by each passes on her death to the next heir of the last male owner.⁷ See also the illustrations in Sec. 10, Note 13, below.

Unchastity.—Unchastity of a daughter is no ground for exclusion from inheritance.⁸

Illegitimate daughter.—The illegitimate daughter even of a Sudra has no rights of inheritance to her father.⁹ According to the Explanation to Sec. 12 (1), illegitimate daughters can inherit their mother's Stridhana equally and simultaneously with her other legitimate children.

Note 4.

² See Sec. 10 (2) (g).

³ *Addakarlu Latchamma v. Subharagudu*, 82 I.C. 788 ; *Alamelu Amma v. Balu Ammal*, 43 Mad. 849 : 28 M.L.J. 685 ; *Amrito Lall v. Rajoni Kant*, 15 Beng. L.R. 10, 24 P.C. ; *Kittamma v. Seshamma*, 43 Mysore 43.

⁴ See *Govinda Rao v. Chandrabai*, 42 Mysore 144 : 15 Mys. L.J. 85.

⁵ *Dyavamma v. Siddegowda*, 20 Mys. L.J. 359.

⁶ 42 Mysore 144.

⁷ 20 Mys. L.J. 359.

⁸ *Advyappa v. Rudrava*, 4 Bom. 104 ; *Kojiyadu v. Lakshmi*, 5 Mad. 149, 156.

⁹ *Bhikya v. Babu*, 32 Bom. 562.

5. (iv) *Daughter's son*.—The daughter's son is not a gotraja sapinda at all, but only a bandhu or a bhinna gotra sapinda. He is however ranked with gotraja sapindas for purposes of succession by virtue of express texts¹ and comes in before the parents and other more remote gotraja sapindas : 'In regard to the obsequies of ancestors, daughter's sons are considered as son's sons'. Mit., Chap. II, Sec. 2, verse 6. The daughter's son succeeds not through his mother, but in his own right as an heir to his maternal grandfather. But he cannot succeed so long as there is any daughter of the propositus living and capable of taking either as heir or by survivorship to her sisters.² The reason is that he takes not as heir to any daughter who may have died, but as heir to his own grandfather and, of course, cannot take at all so long as there is a nearer heir in existence.³ He takes a full estate in the property and becomes a fresh stock of descent.⁴

Two or more daughter's sons.—Daughter's sons take *per capita* and not *per stirpes*. See Sub Sec. (5). Their Lordships of the Privy Council held in *Venkayamma v. Venkataramanayamma*⁵ that two or more sons by a daughter living as members of a joint family take their maternal grandfather's estate as joint tenants with rights of survivorship. On the particular circumstances of that case the rule of survivorship which admittedly governed their other property was held to apply also to the estate which had come to them from their maternal grandfather. But in view of Sub Sec. (5) of this section the decision of the Privy Council in *Venkayamma's case*⁵ cannot in terms apply in Mysore after this Act came into force. Even if sons by a daughter are living in Mysore as members of a joint Hindu family,

Note 5.

¹ *Srinivasa v. Dandayudhanani*, 12 Mad. 411.

² *Amrito Lal v. Rajani Kant*, 15 B.L.R. 10 : 23 W.R. 214 P.C.; *Sant Kumar v. Deo Saran*, 8 All. 365.

³ See *Mayne's Hindu Law*, 10th edn., p. 661.

⁴ *Muthuvaduganatha v. Periaswamy*, 19 Mad. 451 P.C.

⁵ 25 Mad. 678 P.C.

they inherit the property as tenants-in-common without rights of survivorship. It is however open to them to throw it into the common stock and blend it with their other joint family properties, in which case the rule of survivorship governing their other properties will also apply to the property inherited from their maternal grandfather. It is now held by the Privy Council that property inherited by a person from his maternal grandfather is not 'ancestral' property in the technical sense that his son acquires in it by birth an interest jointly with him.⁶

Son adopted after daughter's death.—According to Sub Sec. (6) of this section every reference to the son of a female relative in this section should be read as excluding a son adopted after the death of such female relative. Thus a son adopted after the daughter's death by her husband cannot inherit to his maternal grandfather. But a son adopted by her or by her husband in her lifetime can claim her as his adoptive mother and also claim to inherit to her relatives.

A son adopted by a person after his wife's death cannot claim to be the son of the adopter's wife also, according to the view of Mr. G. Sarkar Sastry, a high authority on the point.⁷ Also where a person, who has severed all ties with his wife and formally discarded her by performing Ghata-shradh in consequence of which she is treated as dead so far as the family is concerned, adopts a son, it was held that he (the adopted son) cannot in law claim her as his adoptive mother or inherit her father's property as his daughter's son.⁸

Note 5.

⁶ *Md. Hussain Khan v. Babu Kisva Nandan*, 1937 P.C. 233.

⁷ See also *Mayne's Hindu Law*, 10th edn., p. 258 ;

Contra—*Sundaramma v. Venkatasubbier*, 49 Mad. 941 : 1926 Mad. 1203 ; *Sounthara Pandyan v. Periavera Thevan*, 1933 Mad. 500 : 56 Mad. 759 F.B.

⁸ *Nageswara Iyer, J., in Srinivasa Iyengar v. Amritavalli Ammal*, 44 Mysore 339 : 17 Mys. L.J. 422, 436.

6. (v) *Mother*.—After this Act came into force, the mother succeeding as heir to her son always takes a full estate in the inheritance. The proviso in Sec. 10 (2) (g) is unmeaning and inapplicable in her case because when she inherits there cannot exist any daughter or daughter's son of the propositus (her son). The circumstance that the property inherited by her from her son becomes her stridhana does not at all affect the question of her liability to pay the debt, if any, with which the property is burdened. Thus where the son, who is under a pious obligation to pay his father's debts, dies without discharging it, the mother who succeeds to the estate will take it subject to the liability to pay the debts.¹

Step-mother.—A step-mother does not take along with the natural mother. Her place is down below after the Father's father and before the Brother's widows.

Adoptive Mother.—Mother includes an adoptive mother, so that she succeeds before the adoptive father according to the Mitakshara Law.²

Unchastity.—Unchastity of a mother is no bar to her succeeding to her son.³

Remarriage.—According to Sec. 6, Mysore Hindu Widows Remarriage Act 1938, a woman on remarriage forfeits her right to inherit to her son by the first husband.⁴

(vi) *Father*.—In cases governed by the Mayukha and under the Dayabhaga school the Father succeeds before the Mother.

7. (vii) *Widows of predeceased sons*.—Widows of gotraja sapindas were recognised as heirs only in Bombay. In

Note 6.

¹ *Mst. Mallan v. Parmatma Das*, 1936 Lah. 558 ; *Jwaramal v. Srinivasa Rao*, 43 Mysore 566 : 17 Mys. L.J. 1 ; *Maya Gowda v. Kempe Gowda*, 6 Mys. L.J. Notes 52.

² *Anandi v. Hari*, 33 Bom. 404 : 3 I.C. 745.

³ *Baldeo v. Mathura*, 33 All. 702 : 11 I.C. 43 ; *Rama v. Nanjamma*, 18 Mys. L.R. 110.

⁴ See Appendix III.

Madras they are not regarded as heirs.¹ In Mysore under this Act, widows of gotraja sapindas are entitled to inherit. Thus the son's widow, the son's son's widow, the brother's widow, father's widow (step-mother), paternal uncle's widow, etc., are all entitled to inherit. They are also called Sagotra sapindas as they enter the gotra of the deceased by marriage.

Among sagotra sapindas, except the mother grandmother and great-grandmother the others are not connected by blood with the propositus. Hence a predeceased son's widow can take only a limited estate in the inheritance. So also the son's son's widow, brother's widow, etc. On her death therefore the estate passes to the next heir of the propositus.

Two or more widows of predeceased sons.—Two or more widows of the same son or of different sons take simultaneously and in equal shares (*per capita*) according to Sub Sec. (5). As they take only a limited estate similar to that taken by co-widows, they succeed as tenants-in-common without rights of survivorship.² Hence the share taken by each passes on her death to the next heir of the propositus.³

Before this Act came into force it was held that a predeceased son's widow is not at all an heir to her father-in-law.⁴ That decision is no longer good law.

8. (viii) *Son's daughter.*—She is a relative connected by blood with the propositus and the proviso in Sec. 10 (2) (g) does not apply to her case. Hence she takes a full estate in the inheritance.

Two or more son's daughters.—Two or more son's daughters by the same son or different sons succeed to the property simultaneously and in equal shares according to

Note 7.

¹ *Balamma v. Pullayya*, 18 Mad. 168 ; *Kanakammal v. Ananthamathi*, 37 Mad. 293 : 25 I.C. 901.

² See *Dyavamma v. Siddegowda*, 20 Mys. L.J. 359.

³ See Note 21 below.

⁴ *Lakshmamamma v. Ramanarasiah*, 7 Mysore 21.

Sub Sec. (5). They take full estates in it as tenants-in-common without rights of survivorship. Hence on the death of one son's daughter her share passes to her own stridhana heirs.

9. (ix) *Daughter's daughter*.—In Bombay, Daughter's daughter (and also other daughters of daughters born in the family, that is, sister's daughter, son's daughter's daughter, father's sister's daughter, etc.) take the inheritance absolutely.¹ But in Madras she takes only a limited estate. In Mysore she takes a full estate in the inheritance, as in Bombay, because she is a relative connected by blood with the propositus and the proviso in Sec. 10 (2) (g) is inapplicable in her case. See also Sec. 10, Note 14 below. Two or more daughter's daughters take full estates as tenants-in-common.

Daughter's daughter and Daughter's son's son.—Even before this Act it was held in Mysore that a Daughter's daughter is to be preferred in the line of heirs to a Daughter's son's son.² This is so even under this Act. A Daughter's son's son comes in No. (xii) below in this sub-section.

10. (x) *Brothers of the whole blood*, (xi) *Brothers of the half-blood*.—Strictly speaking, brothers belong to the family of the father of the propositus and should have come under Sub Sec. (2) of this section.

Brothers of the whole blood succeed before brothers of the half-blood.¹ The half-brothers referred to here are sons of the same father by different mothers. Sons of the same mother by different fathers cannot succeed as 'brothers'.² Where a brother dies after partition, his full-brother takes the share vested in the brother at the partition, to the exclusion of his half-brother.³

Note 9.

¹ *Venayak v. Luxmeebayee*, (1864) 9 M.I.A. 520 ; *Tuljaram v. Mathura Das*, 5 Bom. 662 ; *Gulappa v. Thayawa*, 31 Bom. 453.

² *Seshamma v. Sampath Iyengar*, 15 Mysore 303.

Note 10.

¹ See also *Anant Singh v. Durga Singh*, 32 All. 363 : 6 I.C. 787 P.C.

² *Ekoba v. Kashiram*, 46 Bom. 716 : 66 I.C. 341.

³ *Chikka Nanjundappa v. Nanjappa*, 11 Mysore 164.

11. (xii) *Son's son's daughters, etc.*—This group of heirs consists of seven relatives of whom some are agnates, some are cognates and bandhus ; all of them however are of the same degree of descent from the propositus. They all succeed simultaneously and in equal shares (*per capita*) according to Sub Sec. (5). It follows that the male as well as female relatives of this group take full estates in the inheritance, and every member forms a fresh stock of descent so far as his or her share is concerned.

In *Venkatamma v. Sampath Iyengar*¹ it was held that a daughter's son's son was entitled to inherit in preference to a son and daughter of a daughter's daughter, on the ground that among bandhus of the same class a male bandhu excludes a female bandhu of the same degree of propinquity, and among male bandhus of the same degree he who is separated from the propositus by one female link will be preferred to one who is separated by two female links. This decision is no longer good law in view of this Act under which all these three relatives succeed simultaneously. Rules of preference similar to those relied on in the decision are also enacted in Sec. 5 of this Act, but the opening words of Sec. 5 make those rules inapplicable to cases specially provided for in this section.

12. (xiii) *Widows of predeceased grandsons and great-grandsons.*—These are widows of gotraja sapindas. They are not connected by blood with the propositus and hence take only limited estates in the inheritance. The nature of the estate possessed by them is similar to a widow's estate.¹ Two or more widows under this group take limited estates as tenants-in-common without rights of survivorship. When each of them dies, her share of the estate passes to the next heir of the propositus.² When all the widows are dead the estate passes to the heirs in Sub Sec. (2).

Note 11.

¹ 21 Mysore 248.

Note 12.

¹ Cf. *Kittamma v. Seshamma*, 43 Mysore 43 : 16 Mys. L.J. 232.

² Cf. *Dyavamma v. Siddegowda*, 20 Mys. L.J. 359 ; see Note 21 below.

A widow of a predeceased grandson will not exclude a widow of a predeceased great-grandson where both exist. They succeed simultaneously and in equal shares according to Sub Sec. (5).

13. *Sub Sec. (2) (i) Brother's male issue to the second generation : i.e., Brother's sons and Brother's son's sons.*—If none of the relatives of a person mentioned in groups (i) to (xiii) of Sub Sec. (1) is alive at the time of his death, the inheritance devolves on the members of the family of his father mentioned in this sub section in the order given. The first group in this class is the brother's son and brother's son's son. In British India the brother's son succeeds before the brother's son's son.¹

All the members coming in this group take simultaneously and in equal shares (*per capita*). Thus a brother's son does not exclude a brother's son's son. They take as tenants-in-common and not as joint tenants with right of survivorship even where they are living as members of a joint family.

Whole blood and half-blood.—Among sapindas of the same degree of descent from the common ancestor, a sapinda of the whole blood is preferred to one of the half-blood. This rule applies not only to brothers and brother's sons but also to remoter sapindas.² But this rule of preference does not apply to sapindas of different degrees.³ Even under this Act this rule seems to have been followed. Thus father's brother of the whole blood takes before father's brother of the half-blood. See groups (xii) and (xiii) below.

Brother's son's son and Paternal uncle's son.—Following *Surayya v. Lakshminarasamma*⁴ it was held in Mysore that a paternal uncle's son (father's brother's son) succeeds in

Note 13.

¹ *Sher Singh v. Basdeo Singh*, 1928 All. 612 : 50 All. 904.

² *Nachiappa v. Rangaswamy*, 28 M.L.J. 1 : 26 I.C. 757 F.B.; *Garuddas v. Laldas*, 1933 P.C. 141 : 142 I.C. 807.

³ *Suba Singh v. Sarafraz*, 19 All. 215 F.B.; *Gangasahai v. Kesari*, 37 All. 545 P.C.

⁴ 5 Mad. 291.

preference to the brother's son's son in *Sharadamba v. Venkatappa*.⁵ But the Privy Council in *Buddha Singh v. Laltu Singh*⁶ disapproved of the view in the Madras case⁴ and held that a brother's son's son is also included in 'the compact series of heirs'. Under this Act the brother's son's son takes before the paternal uncle's son who ranks below as a member of the family of the grandfather of the propositus. The Mysore decision above⁵ is therefore not good law now.

14. (ii) *Sister* ; (iii) *Half-sister* ; (iv) *Sister's son* ; (v) *Half-sister's son*.—A sister and a half-sister are relatives connected by blood with the propositus and the proviso in Sec. 10 (2) *g* is inapplicable. Hence they take a full estate in the property inherited from their brother. Before this Act it was held in *Venkatāsubbiah v. Puttiah*¹ that property inherited by a sister from her brother passed on her death to the next heir of the brother. That decision is thus no longer good law. On her death, the property passes to her own Stridhana heirs. Two or more sisters inheriting as co-heirs take absolute estates as tenants-in-common without rights of survivorship. So also two or more half-sisters.

Long before this Act came into force it was held in Mysore that assuming that a sister is entitled to inherit as a bandhu, the claims of a sister's son are superior.² But according to the principle enunciated in *Lakshmanamma v. Nagubai*³ namely, that a male bandhu is not entitled to preference, merely by reason of his being a male, over a female bandhu of nearer degree in the same class, the sister ought to precede the sister's son. But this was dissented from and it was laid down by a majority of the Full Bench in

Note 13.

⁵ 11 Mysore 148.

⁶ 37 All. 604 : 30 I.C. 529 P.C.

Note 14.

¹ 7 Mysore 1.

² *Janakamma v. Soobamma*, 16 Mys. L.R. 35.

³ 18 Mysore 224.

*Krishnamurthi v. Subba Rao*⁴ that a sister's son is a preferential heir to a sister, Chandrasekhara Iyer, J., holding the contrary view. Under this Act the sister's place to succeed before the sister's son is restored and the majority view of the Full Bench is no longer good law.

Sister and maternal uncle's son.—In *Lakshmamamma v. Nagubai*³ where the contest was between the sister and the maternal uncle's son it was held that in Mysore, sex is no ground either for the exclusion of females from the class of bandhus or for their postponement to males in that class and that a sister has a distinctly superior claim than a maternal uncle's son to succeed to the propositus.

Sister and Paternal uncle's son.—Where the contest was between these two relatives, it was held that a sister being a bandhu cannot be preferred to the paternal uncle's son who is a near male sapinda.⁵ This is no longer good law as under this Act sister's place is higher than that of the paternal uncle's son in the order of heirship.

According to the illustration to Sub Sec. (6) of this section a sister's son does not include a son adopted after the sister's death. So also in the case of the half-sister.

15. (vi) *The Father's Mother* ; (vii) *The Father's Father*.—The Father's mother has come into the gotra of the propositus by marriage. She is his sagotra-sapinda. But she is also connected by blood with the propositus, namely, her son's son. Hence according to Sec. 10 (2) g, she takes a full estate in the inheritance. The other wives, if any, of the Father's father do not take along with the Father's mother. They come below as step-grand-mothers.

The Father's mother succeeds before the Father's father for the same reason that the mother succeeds before the father, namely because of her greater natural propinquity.

Note 14.

⁴ 24 Mysore 77 F.B.

⁵ *Halannah v. Earajammah*, 10 Mys. L.R. 151.

But in Bengal where the principle of religious efficacy is the main test of heirship father takes before the mother and the father's father before the father's mother.

Similar remarks apply to the case of the great-grand-parents.

16. (viii) *Step-mothers*.—Being a wife of his father, the step-mother is a sagotra-sapinda and is entitled to inherit as such. Not being connected by blood with her step-son, the propositus, she takes only a limited estate in the inheritance which on her death passes to the next heir of the propositus.

Outside Mysore, a step-mother is no heir at all¹ except in Bombay where she is regarded as an heir and is placed immediately after the paternal grandmother.²

17. (ix) *Brother's widows*.—See notes under son's widow, Note 7 above.

Prior to this Act it was held in *Channabasappa v. Basawa*¹ that a brother's widow is not in the line of heirs and is entitled only to maintenance. That decision is no longer, good law.

(x) *Brother's daughters*.—See notes under son's daughter, Note 8 above.

(xi) *Sister's daughters*.—See notes under daughter's daughter, Note 9 above.

(xii) *Father's brothers of the whole blood*;

(xiii) *Father's brother of the half-blood*.—See notes under 'whole blood and half-blood' in Note 13 above.

Note 16.

¹ *Rama Nand v. Surgiani*, 16 All. 221 ; *Tahaldai v. Gaya Prasad*, 37 Cal. 214 ; *Seethai v. Natchiar*, 37 Mad. 286 : 22 I.C. 18.

² *Russobai v. Zoolekhabai*, 19 Bom. 707.

Note 17.

¹ 12 Mysore 8.

(xiv) *Brother's son's daughters, etc.*—See notes under son's son's daughters, etc., Note 11 above.

(xv) *Widows of brother's male issue to the second generation.*—See notes under Note 12 above.

This exhausts the heirs in the family of the father of the propositus. The succession then passes to the family of the grandfather of the propositus and thereafter to the heirs in the family of the paternal great-grandfather of the propositus in the same relative order as the members corresponding to them in the family of the father of the propositus. See Sub Sec. (3).

18. *Sub Sec. (3). (A) Family of the paternal grandfather of the propositus.*—The heirs coming under the family of the paternal grandfather in the relative order in which they succeed are as given hereunder. The same Roman numerals are used for corresponding groups here as in Sub Sec. (2) in the family of the father of the propositus.

(i) Father's brother's male issue to the second generation, *i.e.*, Paternal uncle's son and Paternal uncle's son's son;

- (ii) Father's sisters;
- (iii) Father's half-sisters;
- (iv) Father's sister's sons¹;
- (v) Father's half-sister's sons;
- (vi) The Father's father's mother;
- (vii) The Father's father's father;
- (viii) Step-grandmothers (Father's father's other wives);
- (ix) Father's brother's widows;
- (x) Father's brother's daughters;
- (xi) Father's sister's daughters;
- (xii) Father's father's brothers of the whole blood;
- (xiii) Father's father's brothers of the half-blood;

Note 18.

¹ *Venkatramasetty v. Boregowda*, 30 Mysore 3 : 2 Mys. L.J. 183.

(xiv) Paternal uncle's son's daughters ; Paternal uncle's daughter's sons ; Paternal uncle's daughter's daughters ; Father's sister's son's sons ; Father's sister's son's daughters ; Father's sister's daughter's sons ; and Father's sister's daughter's daughters ;

(xv) Widows of father's brother's (Paternal uncle's) male issue to the second generation.

The inheritance then passes to the family of the paternal great-grandfather in the same relative order given below. Same Roman numerals are used to the groups in this family corresponding to those in the father's family.

(B) *The heirs in order in the paternal great-grandfather's family are these:—*

(i) Father's father's brother's male issue to the second generation, *i.e.*, father's paternal uncle's sons and father's paternal uncle's son's sons ;

(ii) Father's father's sisters ;

(iii) Father's father's half-sisters ;

(iv) Father's father's sister's sons ;

(v) Father's father's half-sister's sons ;

(vi) The Father's father's father's mother ;

(vii) The Father's father's father's father ;

(viii) Step great-grandmother's (Father's father's father's other wives) ;

(ix) Father's father's brother's widows ;

(x) Father's father's brother's daughters ;

(xi) Father's father's sister's daughters ;

(xii) Father's father's father's brothers of the whole blood ;

(xiii) Father's father's father's brothers of the half-blood ;

(xiv) Father's father's brother's son's daughters ; Father's father's brother's daughter's sons ; Father's father's brother's daughter's daughter ; Father's father's

sister's son's sons; Father's father's sister's son's daughters; Father's father's sister's daughter's sons; and Father's father's sister's daughter's daughters;

(xv) Widows of the father's father's brother's male issue to the second generation.

19. *Sub Sec. (4): Family of the maternal ancestors.*—When there are no members of the family of the paternal ancestors of the propositus to the third degree, the succession devolves upon the maternal ancestors to the third degree and their respective families one after the other, and under the same rules *mutatis mutandis* (with the necessary changes) as to relative order within each such family as are applicable to the families of the paternal ancestors. It will be seen that many of the relatives coming under this sub-section will, if they exist, have already succeeded to the property as members of the family of one or other of the paternal ancestors of the propositus.

The members of the family of the mother of the propositus who take first under this sub-section are given below in the order they take indicated by Roman numerals corresponding to those in the family of the father of the propositus:

(i) *Brother's male issue to the second generation.*—These do not exist and do not take here. For, if they existed they would succeed as members of the family of the father of the propositus under Sub Sec. (2) (i).

(ii) *Sisters.*—The same remarks as in (i) above apply to sisters also.

(iii) *Half-sisters.*—There can be no heir of this relationship in the family of the mother of the propositus as that relationship denotes in the family of the father.

(iv) *Sister's sons.*—These if in existence will have already taken under Sec. 4 (2).

(v) *Half-sister's sons.*—See remarks under (iii) above.

(vi) *The Mother's mother.*—The maternal grandmother will be the first relative taking under this sub section

because as already noticed, (i) to (v) above succeed under Sub Sec. (2) alone if they existed.

(vii) *The mother's father.*

(viii) No relative here corresponding to step-mother in Sub Sec. (2).

(ix) *Brother's widows.*—These also come under Sub Sec. (2) itself.

(x) *Brother's daughters.*—Same remarks as in (i) above.

(xi) *Sister's daughters.*—Same remarks as in (i) above.

(xii) *Mother's brothers of the whole blood, i.e., maternal uncle.*

(xiii) *Mother's brothers of the half-blood.*

(xiv) *Brother's son's daughters, etc.*—These are the same as in Sub Sec. (2) (xiv) above and hence will have already taken if they exist.

(xv) *Widows of brother's male issue to the second generation.*—Same remarks as in (i) above.

Maternal uncle of half-blood (xiii) and Father-in-law.—The father-in-law cannot be preferred to a maternal uncle of the half-blood who is a bandhu. It was thus held that the mere fact that the father-in-law of a deceased Brahmin is, failing bandhus and failing disciples, entitled to perform the shraddha does not entitle a bandhu who is also a father-in-law to inherit in preference to another bandhu who is not a father-in-law.¹

The succession then passes to the family of the maternal grandmother and thereafter to the family of the maternal great-grandmother.

20. *Other heirs.*—The heirs coming within Sub Secs. (1) to (4) of this section form a short but comprehensive

Note 19.

¹ *Gopalayya v. Venkatarayappa*, 22 Mysore 272.

table of heirs of both sexes within a range of three degrees. In default of the above enumerated heirs, the succession passes to remoter heirs namely the Sakulyas and Samanodakas. Sakulyas extend to three degrees both in ascent and descent beyond the Sapindas and Samanodakas extend to seven degrees beyond the Sakulyas or even further,—according to Manu, so long as the pedigree can be traced. The Samanodakas of a person include all his agnates from the 8th to the 14th degree.¹ After all the members of the gotra extending to the 14th degree are exhausted, the relations of other or different gotras not already allocated take the inheritance.

Preceptor, disciple and members of Religious Orders.—In default of kindred the property of a deceased Hindu, even though he be a Sudra passes to his preceptor; if there be no preceptor, to his disciple; and if there be no disciple, to his fellow-student.²

The heir to the property of a hermit (vanaprastha) is his spiritual brother belonging to the same hermitage, to that of an ascetic (sanyasi) a virtuous pupil, and to that of a student of theology (Brahmachari) his religious preceptor. These heirs are entitled to succeed in preference to the kindred of the deceased.³ A Naishtika Brahmachari is a lifelong celibate who is a perpetual religious student and who lives with his religious preceptor and vows lifelong abstinence and charity.⁴ Nageswara Iyer, J., observed recently that the Hindu Law texts relating to the succession by preceptors enunciated in Yajnavalkya, Chap. II, verse 137, and Mitakshara, Chap 2, Sec. 7, are not obsolete and that

Note 20.

¹ *Atma Ram' v. Baji Rao*, 1935 P.C. 57 : 155 I.C. 330 ; *Rama Rao v. Kuttiya*, 40 Mad. 654, 659 : 34 I.C. 294.

² *Sambasivam v. Secretary of State*, 44 Mad. 704 : 63 I.C. 659.

³ *Mulla's Hindu Law*, 9th edn., p. 70 ; *Mitakshara*, Chap. II, Sec. 7 ; *Ramdas v. Baldeodasji*, 39 Bom. 168 : 26 I.C. 607 (Sanyasi) ; *Somasundaram v. Vaithilinga*, 40 Mad. 846 : 41 I.C. 546.

⁴ *Yajnavalkya*, Chap. II, verse 137.

according to Hindu Law the preceptor or guru would be the heir to the property of a Naishtika Brahmachari or 'lifelong celibatist'.⁵

On failure of all the heirs the Crown takes by escheat.⁶ The burden is on the Crown to show that the last proprietor died without heirs.⁷

21. *Sub Section (5).*—This sub-section states that co-heirs shall among themselves take simultaneously and in equal shares, provided that the male issue of the propositus shall take according to stock. So far as male co-heirs are concerned, this was the position even before this Act came into force. But as regards female co-heirs this sub-section effects a change of some consequence. The effect of this sub-section was very recently considered in *Dyavamma v. Siddegowda*.¹ In that case, a Hindu died in 1912 leaving two widows and a daughter. By an arrangement between them the widows were in separate possession and enjoyment almost in equal shares of their husband's estate. One of them alienated her share for a necessary purpose. The other widow, in this suit brought after 1933, contended that the former could not alienate the property so as to defeat her vested right of survivorship to it. It was held by the High Court in Second Appeal that by reason of Sub Sec. (5) the joint estate with right of survivorship held by the co-widows from 1912 became altered on 1st January 1934 into a tenancy-in-common and the right of survivorship between them was also destroyed. The circumstance that the co-widows' estate is not enlarged into a full estate,² but continues to be a limited estate even under this Act was

Note 20.

⁵ *Peerchand v. Anantha Setty*, 44 Mysore 307 : 17 Mys. L.J. 326.

⁶ *Collector of Masulipatam v. Cavety Venkata* (1860) 8 M.I.A. 500.

⁷ *Girdhari Lal v. Bengal Government* (1868) 12 M.I.A. 448 ; *Ganpat v. Secretary of State*, 1921 Bom. 138 : 45 Bom. 1106.

Note 21.

¹ 20 Mys. L.J. 359.

² Cf. *Govinda Rao v. Chandrabai*, 42 Mysore 144 : 15 Mys. L.J. 85.

urged as a ground for holding that survivorship between them was not destroyed. Rejecting that contention Nageswara Iyer, J., observes: 'But can the mere nature of the estate taken make any such distinction? We do not think that any principle of law or equity would justify such a distinction being made and Sub Sec. (5) of Sec. 4. makes no such distinction'.

It follows from the above that where female co-heirs inherit as limited owners, on the death of each of them her share of the inheritance passes to the next heir of the last male owner and not to the other co-heir by survivorship. Thus suppose A dies leaving two widows W_1 and W_2 and a daughter D. A's estate is inherited by W_1 and W_2 in equal shares as limited owners. If W_1 dies first, W_2 cannot succeed to W_1 's share by survivorship because this subsection has destroyed her right of survivorship to it. W_1 's share therefore must revert to the next heir of A, that is, to the one most nearly related to A at the time. That again happens to be W_2 , the surviving co-widow. In the circumstances therefore, though the mode of devolution has changed from survivorship to succession the final result is the same. It will however be seen that W_2 's right of survivorship to W_1 's share which was a vested right (alienable but not heritable) is taken away by this subsection and reduced into a *spes successionis*. This is an instance where the Act has not enlarged but reduced the right of women.

Section 5

General rules as to order of preference.—Except as otherwise specially provided in the preceding section and in Sec. 12, the order of preference among heirs shall be regulated by the following rules :—

Firstly, a nearer line shall exclude one more remote.

Explanation to Rule I.—The descendants of the propositus constitute a nearer line than those of the father, the descendants of the father a nearer line than those of the grandfather, and

so on, up to a limit of three degrees from and exclusive of the common ancestor in each case.

Secondly, within each line limited as aforesaid, agnates shall be preferred to cognates irrespective of degree.

Thirdly, among agnates, and likewise among cognates, heirs nearer in degree to the propositus shall exclude those more remote ; but where the degrees are equal, a male shall be preferred to a female.

Explanation to Rule III.—Male issue up to three generations shall count as one degree for the purpose of this Rule.

Fourthly, in the absence of any ground of preference as herein provided, heirs of the same degree reckoned from the propositus shall take equally.

SYNOPSIS

Note.—(1) Scope of the section.

1. *Scope of the section.*—This section lays down a few general rules as to the order of preference among heirs to a Hindu male or female dying intestate. The general rules laid down in this section to show how propinquity may be measured in practice, do not govern the case of heirs whose relative order of succession has been specifically fixed in Sec. 4 and Sec. 12 respectively. Rules of preference similar to those prescribed in this section were recognised even prior to this Act. See notes under Sec. 4 Note 11 above.

CHAPTER IV

MINORITY AND GUARDIANSHIP

SYNOPSIS

Note.—(1) Age of majority; (2) Three classes of guardians; (3) Guardian of person and separate property of minor; (4) Guardianship of undivided interest of minor; (5) Guardianship of a married female; (6) Guardianship of an adopted son; (7) Remarriage of mother of minor children; (8) Change of religion or loss of caste of father; (9) Powers of a Natural guardian; (10) Contracts by Natural guardian; (11) Suit to set aside alienations; (12) Testamentary guardians; (13) Powers of Testamentary guardians; (14) Court guardians; (15) Powers of Court guardian; (16) *De-facto* guardian.

1. *Age of majority.*—Though there is no express legislative enactment in Mysore corresponding to the Indian Majority Act 1875, the view has been uniformly held by the Courts that majority is attained only on the completion of the eighteenth year except where any particular age of majority is laid down in special enactments.¹

2. *Three classes of guardians.*—There are three kinds of Guardians, namely, (1) Natural Guardians, (2) Testamentary Guardians, that is, guardians appointed by the father by will, and (3) Guardians appointed under the Guardians and Wards Act V of 1911.

3. I. *Natural guardians : Guardian of person and separate property of minor.*—The father is the natural guardian of the person and separate property of his minor children.¹ Next to the father the mother is their natural guardian, unless the father has appointed another person by his will.²

Note 1.

¹ *Siddappa v. Seshadri*, 18 Mysore 79; *Govt. of Mysore v. Anandaraya Mdr.*, 10 Mys. L.J. 323.

Note 3.

¹ *Nanabhai v. Janardan*, 12 Bom. 110, 120; *Venkateswaran v. Saradambal*, 1936 Rang. 67 : 160 I.C. 878; *Naranabhatta v. Lakshminarasamma*, 11 Mys. L.J. 56.

² *Kaulesra v. Jorai*, 28 All. 233.

The parents are the only persons recognised as natural guardians of their children. A paternal uncle is not a natural guardian of a minor.³ A person is not a natural guardian of his divided younger brother.⁴

In the absence of parents or guardian appointed by the father by his will, the selection of a guardian is to be made by the Court. The nearest male paternal relatives and failing paternal relatives the nearest male maternal relatives may be appointed guardians.⁵ But the claim of the near relatives to be so appointed does not amount to a legal right.⁶ The Court may appoint even a stranger in preference to relatives, if the welfare of the minor requires it.⁷

A Court has no power to appoint a guardian of the person of a minor whose father is alive and is not in its opinion unfit to be the guardian of the minor's person.⁸ It is a question of fact in each case whether the father is fit to be the guardian or not. A mere charge of immorality should not however be allowed to weigh against him.⁹

4. *Guardianship of undivided interest of minor.*—In an undivided family the father or other senior member for the time being as *Karta* is entitled to manage the whole coparcenary property including the minor's interest.¹ Where all the coparceners are minors the eldest of them is competent

Note 3.

³ *Rudrappa v. Venkatanarayanappa*, 42 Mysore 481 : 15 Mys. L.J. 456.

⁴ *Channappa v. Onkarappa*, 1940 Mad. 33 : (1940) Mad. 358 F.B.; *Ethiraja v. Murugesu*, 1942 Mad. 282 : (1941) 2 M.L.J. 1088.

⁵ *Gulbai*, in Re 32 Bom. 50 ; *Trevelyan on Minors*, 5th edn., pp. 49-50.

⁶ 11 Mys. L.J. 56.

⁷ *Thayammal v. Kuppamma*, 38 Mad. 1125 : 26 I.C. 129 ; see Sec. 16 G. and W. Act.

⁸ See Sec. 18 (b) G. and W. Act.

⁹ *Empress v. Prankrishna*, 8 Cal. 969 ; *Sukhdeo v. Ramachandra*, 46 All. 706 ; *Muniamma v. Muniswamappa*, 10 Mys. L.J. 156.

Note 4.

¹ *Suraj Bansi Koer v. Sheo Prasad*, 5 Cal. 148 P.C. ; *Mallappa Setty v. Baliah Naidu*, 6 Mysore 17 ; *Javare Gowda v. Mari Gowda*, 28 Mysore 286 : 1 Mys. L.J. 72.

as managing member of the family to be the guardian of his wife or child or of the wife or child of another minor member of the family.² The Court may in such a case appoint a guardian of the whole of the joint family property until one of them attains majority.³ The guardian is then bound to hand over the property to him notwithstanding the fact that the other sons are minors.⁴ But the mother is not entitled to the custody of the undivided interest of her minor son, though she is entitled to the custody of the person and separate property if any of her minor son as his natural guardian.⁵ Thus where one of two undivided brothers died leaving his widow and minor son, the other brother became the manager of the joint family and it was held that though the widow might have the custody of the minor son she has no power to dispose of the minor's interest in the joint family property.⁶ She can however act as next friend of her minor son and file a suit for partition on his behalf.⁶ In Mysore, dumbness which is non-congenital is not a disqualification for a person becoming manager of a joint Hindu family.⁷

5. *Guardianship of a married female.*—See Sec. 11, Note 2, below.

6. *Guardianship of an adopted son.*—A minor on adoption passes into the guardianship of his adoptive parents.¹ The natural father of an adopted boy cannot be

Note 4.

² Sec. 20 G. and W. Act.

³ 28 Mysore 286; *Bindaji v. Mathurabai*, 30 Bom. 152.

⁴ *Ramchandra v. Krishna Rao*, 32 Bom. 259; *Chandrapal Singh v. Sarabjit Singh*, 1935 Oudh 334 : 154 I.C. 855.

⁵ *Gharib Ullah v. Khalik Singh*, 25 All. 407 P.C.; *Kenchayya v. Subbiah*, 42 Mysore 268 : 15 Mys. L.J. 43; *Mara v. Bettaswamy Gowda*, 46 Mysore 706 : 19 Mys. L.J. 455.

⁶ 42 Mysore 268.

⁷ 46 Mysore 706.

Note 6.

¹ *Sree Narain v. Kishen* (1873) 11 Beng. L.R. 171 P.C.; see also *Manomohini Dasi v. Hari Prasad*, 1925 Pat. 445 : 4 Pat. 109.

regarded as his *de jure* guardian even in the absence of the adoptive parents, unless he is so appointed by the Court.²

7. *Remarriage of mother of minor children.*—Sec. 7 of the Mysore Hindu Widow's Remarriage Act 1938 provides that on the remarriage of a Hindu widow if neither the widow nor any other person has been expressly constituted testamentary guardian of his minor children by the deceased husband, it shall be lawful for the Court to appoint a guardian who when appointed shall be entitled to have the care and custody of the children or any of them during their minority, in the place of the mother ; in making such appointment, the Court shall be guided, as far as may be, by the laws and rules touching the guardianship of children who have neither father nor mother ; provided that no such appointment shall be made without the consent of the mother if the minors have not property of their own sufficient for their support and proper education whilst minors.¹

8. *Change of religion or loss of caste of father.*—According to Sec. 2 of the Act for the removal of religious and caste disabilities,¹ these disabilities do not deprive a person of any personal right except those which are peculiar or appropriate only to the religion which he has renounced or caste of which he has been deprived. See also the under-mentioned cases.²

9. *Powers of a natural guardian.*—The powers of the manager for an infant heir to charge an estate not his own is a limited and qualified power. It can only be exercised

Note 6.

² *Purushothama v. Brindavana* (1931) M.W.N. 417 : 133 I.C. 773.

Note 7.

¹ Sec. 7, Act XII of 1938, see Appendix III.

Note 8.

¹ See Appendix IV.

² *Shamsingh v. Santabai*, 25 Bom. 551, 555 ; *Mokond v. Nobodip* 25 Cal. 881 ; *Skinner v. Orde* (1871) 14 M.I.A. 309, 323.

in a case of need or for the benefit of the estate.¹ The lender is bound to inquire into the necessity for the alienation and to satisfy himself as well as he can, that the guardian is acting in the particular instance for the benefit of the estate.² See also Sec. 18, Note 5, below.

Burden of proof.—The burden of proof on the alienation is the same as that in the case of an alienation by a female limited owner or a manager. See Sec. 18, Note 8, below.

10. *Contracts by natural guardian.*—The natural guardian has power to enter into contracts and to do all other acts which are reasonable and proper for the protection or benefit of the minor's property and for the advantage of the minor.¹ Whether the act is or is not in the interest of the minor and for his benefit is the test of a lawful guardian's act.² He cannot bind the minor by a personal covenant,³ though he can make the minor's estate liable for

Note 9.

¹ *Srinivasa Rao v. Tirumala Rao*, 1 Mysore 91 (Alienation by husband without legal necessity—not upheld); *Lakshmidasa alias Thimmia v. Kasi Ranganna*, 8 Mysore 111 (Debt by manager for legal necessity—upheld); *Sanganna v. Chinna Venkatappa*, 25 Mysore 47; *Hanuman Prasad v. Mst. Babooee*, 6 M.I.A. 393, 412; *Sundar Narain v. Bennud Ram*, 4 Cal. 76 (Sale by mother for L.N.—upheld); *R. J. Agarwala v. Chand Mandal* (1937) 2 Cal. 764 (Mortgage for expenses of minor's marriage in violation of law—not upheld); *Kanhia Lal v. Muna Bibi*, 20 All. 135 (Mortgage by mother not for necessity—not upheld); *Punnayya v. Viranna*, 1922 Mad. 273 : 45 Mad. 425 (Mortgage by mother for carrying on new trade on behalf of minor—not upheld); *Ragho v. Zaga*, 1929 Bom. 251 : 53 Bom. 419 (Sale by guardian of minor's land for better investment—not upheld); *Hemraj v. Nathu*, 1935 Bom. 295 : 59 Bom. 525 F.B. (Sale because more than normal value is fetched—not upheld).

² 6 M.I.A. 393; *Mallappa v. Anant Balkrishna*, 1936 Bom. 386 : 166 I.C. 154.

Note 10.

¹ *Subramanya v. Armuga*, 26 Mad. 303; *Krishna v. Nagamoni*, 39 Mad. 915 : 30 I.C. 574.

² *Muniappa v. Nagappa*, 2 Mysore 84; *Javare Gowda v. Mari Gowda*, 28 Mysore 286 : 1 Mys. L.J. 72.

³ *Waghela v. Sheik Masluddin*, 11 Bom. 551 P.C.; *Lala Narain Das v. Ramanuj*, 20 All. 209 P.C.; *Surendranath v. Atul Chandra*, 34 Cal. 892; *Venkappiah v. Visweswariah*, 15 Mys. L.R. 196.

a binding debt.⁴ It is not within the competence of the guardian to bind the minor or the minor's estate by a covenant for the purchase of immovable property for the minor.⁵

It is a question of fact in each case whether a particular act done by a person was done by him in his capacity of guardian or on his own account.⁶ In the former case the act binds the minor provided it was otherwise within the powers of the guardian.⁷ On attaining majority, the minor is free, if he can, to strike his own bargain with the other party. Thus where a guardian gave possession of the minor's lands to a company under a certain arrangement and the minor on attaining majority granted a patta to the company, it was held that the rights and liabilities between him and the company were governed by the patta alone, and not by the terms of the deed executed by his guardian subject only to the variations in the patta.⁸ The mere fact that the name of the minor is not mentioned in the contract or in the deed of alienation is not conclusive proof that the transaction was not entered into on behalf of the minor.⁹

Compromise by natural guardian.—It is competent for a guardian to enter into a compromise on behalf of the ward.¹⁰

11. *Suit to set aside alienations.*—The acts of a guardian in managing the estate of a minor are binding on the latter when *bonafide* and for his interest. Otherwise they may

Note 10.

⁴ *S. Chowdhury v. Harnandan Singh*, 1933 Pat. 29 : 12 Pat. 112 ; *Ramanathan v. Palaniappa*, 1939 Mad. 531 : (1939) Mad. 776 ; *Annamalai v. Muthuswamy*, 1939 Mad. 538 : (1939) Mad. 891.

⁵ *Mir Sarwarjan v. Fakruddin*, 39 Cal. 223 P.C.

⁶ *Nanjundappa v. Thammarasias*, 11 Mys. L.R. 260 ; *Venkatramegowda v. Bora*, 1 Mysore 103.

⁷ *Thimma v. K. Subbiah*, 9 Mysore 244 ; *Narasi v. Boriah*, 23 Mysore 89 F.B. ; *Subbamma v. Narasimhabhatta*, 36 Mysore 176 : 9 Mys. L.J. 287.

⁸ *Umed Narain v. Equitable Coal Co.*, 1942 P.C. 1.

⁹ *Indur Chander v. Radha Kishore*, 19 Cal. 507 P.C. ; *Nathu v. Balwant Rao*, 27 Bom. 390 ; *Nandan Prasad v. Abdul Aziz*, 1923 All. 581 : 45 All. 497 ; *Tara Kiran v. Hari*, 1928 All. 251 : 50 All. 447 ; *Naranabhatta v. Lakshminarasamma*, 11 Mys. L.J. 56.

¹⁰ *Nirvanayya v. Nirvanayya*, 9 Bom. 365.

be avoided. They are not *ab initio* void but only voidable and an alienation even if wrongful or unjustifiable must be regularly set aside before it can be avoided.¹

A suit by a ward who has attained majority to set aside an alienation by his guardian must be brought within 3 years from the date of the ward attaining majority. See Art. 44 Lim. Act. The definition of 'ward' given in the Guardians and Wards Act applies also to the Limitation Act though it is not defined there. It means a person having a guardian and such a guardian can be either one appointed by a competent Court or a guardian by reason of the personal law of the minor or a testamentary guardian.² The husband is the guardian of his minor wife's property and hence a suit to set aside an alienation by her husband as her guardian is governed by Art. 44 Lim. Act and must be brought within 3 years of her attaining majority.³ Where a guardian of two minor undivided brothers disposed of a property while they were minors and the elder brother did not sue to set aside the alienation within 3 years of his becoming a major, it was held that his failure to do so bound his younger brother also, and that the younger brother did not have a fresh period of time in which he could sue after he became a major. The elder brother on attaining majority, became the manager of the family and hence his failure to sue bound his younger brother also by the application of Sec. 7 Lim. Act on the ground that he could give a discharge in the matter within the meaning of that section.⁴ On the same principle, if in a joint Hindu family an alienation is made by the father during the minority of his sons, a suit brought to set it aside, after the death of the father, by the sons more

Note 11.

¹ *Javare Gowda v. Mari Gowda*, 28 Mysore 286 : 1 Mys. L.J. 72 ; *Fakirappa v. Lumanna*, 1920 Bom. 1 : 44 Bom. 742.

² *Rudrappa v. Venkatanarayanappa*, 42 Mysore 481 : 15 Mys. L.J. 456.

³ *Lakshmiddevamma v. Dhanaalakshamma*, 42 Mysore 464 : 15 Mys. L.J. 443.

⁴ 28 Mysore 286.

than three years after the eldest son attained majority, is barred by the law of limitation.⁵ A suit can however be filed to set aside an alienation by a guardian, on behalf of all the minor members even before they attain majority.⁶ There is no distinction between a suit brought by junior members to get rid of an alienation by a late manager of their joint family and a suit by ex-minors to get rid of alienations made by their guardian.⁷

A paternal uncle is not a natural guardian and a suit to set aside an alienation by him of minor's property is governed by Art. 144 and not by Art. 44 Lim. Act.⁸

12. II. *Testamentary guardians*.—A Hindu father may by his will or other instrument appoint a person to be guardian for his children, after his death. He may appoint his wife or even others for the guardianship.¹ This right to appoint is peculiar to the father. The mother has not the power to appoint a guardian for her children by her will.² But the Court will have regard to her wishes expressed in her will if any.

Even the father has no power to appoint a testamentary guardian for his minor children in respect of the joint family properties,³ nor is a manager of a joint family other than the father competent to appoint such guardian.⁴ This is

Note 11.

⁵ *Sundar Singh v. Bore Gowda*, 44 Mysore 445 : 17 Mys. L.J. 216 ; see also *Jawahir Singh v. Udai Prakash*, 48 All. 152 P.C. (Failure of eldest brother to sue did not bar suit by other brothers because the eldest brother was not the manager of the family, as the father was living).

⁶ *Anu Basappa v. Huchanna*, 18 Mysore 74.

⁷ 44 Mysore 445.

⁸ *Rudrappa v. Venkatanarayanappa*, 42 Mysore 481.

Note 12.

¹ *Debanund v. Anandamani*, 1921 All. 346 : 43 All. 213 ; *Jagannatha v. Ramayamma*, 1921 Mad. 132 : 44 Mad. 189 (Guardian of son to be adopted by widow).

² *Venkayya v. Venkata*, 21 Mad. 401.

³ *Brijbukan Das v. Ghasiram*, 1935 Bom. 124 : 59 Bom. 316 F.B.

⁴ *Chidambara v. Rangaswami*, 41 Mad. 561 : 45 I.C. 905 F.B.

based on the ground that since a Hindu cannot dispose of his coparcenary property by will, he cannot also make arrangements for the management of that property by will after his death or appoint a guardian therefor.⁵

13. *Powers of testamentary guardian.*—The power of a testamentary guardian to mortgage or charge or transfer by sale, gift, exchange or otherwise, immovable property belonging to his ward is subject to any restriction which may be imposed by the instrument under which he is appointed.¹ A disposal of immovable property in contravention of it is voidable at the instance of any other person affected thereby.²

14. III. *Guardian appointed by the Court: Court guardians.*—Where the Court is satisfied that it is for the welfare of a minor it can make an order appointing a guardian of his person or property or both, or declare a person to be such guardian.¹ The Court has no power to appoint a guardian under Sec. 6 Guardians and Wards Act, where the father of the minor children has appointed a testamentary guardian for them.² If the power of such guardian has ceased under the Guardians and Wards Act the Court can appoint or declare a guardian for the minors.³ A natural guardian has no need to be declared or appointed as such by a Court under the Guardians and Wards Act.⁴

The Court can appoint a guardian for the person and for the separate property of the minor. The Court cannot appoint a guardian for the undivided interest of the minors

Note 12.

⁵ 41 Mad. 561, 570, 572 F.B.

Note 13.

¹ Sec. 27 G. and W. Act.

² Sec. 29 G. and W. Act.

Note 14.

¹ Sec. 6 G. and W. Act.

² *Amritavalliammal v. Siromani Ammal*, (1938) Mad. 757.

³ Sec. 6 (3) G. and W. Act.

⁴ *Venkateswaran v. Saradambal*, 1936 Rang. 67 : 160 I.C. 878 (father) ; *Lakshmanachari v. Subbanna*, 39 Mysore 198 : 12 Mys. L.J. 180 (The Court's order appointing husband as his minor wife's guardian is not to be taken in a literal sense).

where there is even a single major coparcener in the family.⁵ The reason is that the interest of a member of a joint family is not separate or individual property.

15. *Powers of Court guardian*.—A guardian appointed by the Court cannot without the permission of the Court alienate the ward's property; he can only grant a lease of any part of the property for a term not exceeding five years or any term extending beyond one year of the ward ceasing to be a minor.¹ An alienation in contravention of it is voidable at the instance of any other person affected thereby.² The Court will permit an alienation by the Court guardian in a case of necessity or for an evident advantage to the ward.³

Where an alienation is made with the permission of the Court, it cannot be impeached by any one except on the ground of fraud. The alienee is not bound to inquire into the necessity for the alienation and can rely on the Court's order permitting the alienation.⁴

16. *De facto guardian*.—A *de facto* guardian is one who, not being a natural guardian or a guardian appointed by the Court, manages the minor's estate. A *bonafide* alienation by the *de facto* guardian of a Hindu minor for the benefit of the minor's estate cannot be impeached on the sole ground that he is merely a *de facto* guardian.¹

Note 14.

⁵ *Gharibullah v. Khalik Singh*, 25 All. 407 P.C.; *Ramachandra v. Krishna Rao*, 32 Bom. 259; *Devappa v. Venkatasubbiah*, 18 Mysore 119; *Javare Gowda v. Mari Gowda*, 28 Mysore 286; 1 Mys. L.J. 72; *Kenchavya v. Subbiah*, 42 Mysore 268; 15 Mys. L.J. 43.

Note 15.

¹ Sec. 28 G. and W. Act.

² Sec. 29 G. and W. Act; *Hossain v. Ayesha* (1941) Mad. 775.

³ Sec. 30 G. and W. Act; *Rangachar v. Seshadri Iyengar*, 45 Mysore 403; 19 Mys. L.J. 202.

⁴ *Gangaprasad v. Maharani Bibi*, 11 Cal. 379 P.C.; *Venkataswamy v. Veeranna*, 1922 Mad. 135; 45 Mad. 429.

Note 16.

¹ *Kundan Lal v. Beni Prasad*, 1932 Lah. 293; 12 Lah. 399; *Sheo Gobind v. Ram Adhin*, 1933 Oudh 31; 140 I.C. 556 (Alienation for marriage expenses)-

CHAPTER V

MARRIAGE *

SYNOPSIS

Note.—(1) Nature of marriage ; (2) Who can marry ; (3) Forms of marriage ; (4) Presumption as to form of marriage ; (5) Guardianship in marriage ; (6) Marriage ceremonies ; (7) Identity of caste ; (8) Prohibited degrees of relationship ; (9) Presumption as to legality of marriage ; (10) Marriage expenses ; (11) Effects of marriage ; (12) Divorce ; (13) Restitution of conjugal rights.

1. *Nature of marriage.*—According to the Hindu Law marriage is not a contract but a sacrament. It is one of the Samskaras or purificatory ceremonies enjoined by the Hindu religion.¹ It is regarded as a holy union between a man and a woman for the performance of religious duties.² The union is indissoluble in life. After the death of the husband the widow can legally remarry under the Hindu Widow's Remarriage Act.³

2. *Who can marry.*—Every Hindu is competent to marry in spite of minority or infirmity. But the marriage of a girl who has not completed eight years of age is made punishable under the Mysore Infant Marriages Prevention Act.¹ In British India, the Child Marriage Restraint Act 1929 restrains the solemnisation of child marriages, the word 'child' being defined as a person who if a male is under

* There are very few decisions of the Mysore High Court coming under this subject. It may however be taken that the position here is more akin to that in the Madras school than anywhere else, as observed in *Dodda Moga v. Narayana Bhatta*, 2 Mys. L.J. 157.

Note 1.

¹ *Sundarabai v. Shivanarayana*, 32 Bom. 81 ; *Gopalkrishna v. Venkatesha*, 37 Mad. 273 F.B.

² 32 Bom. 81.

³ See Appendix III.

Note 2.

See Appendix I.

eighteen years of age and if a female is under fourteen years of age and 'child marriage' being defined as a marriage to which either of the contracting parties is a child.

Idiocy or Lunacy would be a disqualification to marriage, if it is of such a degree as to prevent the lunatic or idiot from understanding the nature of the act.² It was recently held that the marriage of a Hindu lunatic, though improper and discouraged by Hindu Law, is not invalid if duly solemnised. Whatever injunction against such a marriage may be read into the ancient commentaries, it would be of a directory rather than of a mandatory character.³

The Hindu marriage not being a contract but only a sacrament, the mere fact that the marriage was brought about by the parents during the minority of a party or without his consent does not render the marriage invalid.⁴ But a marriage brought about by force or fraud is altogether invalid.⁵

A Hindu may marry any number of wives although he has a wife or wives living.⁶ But monogamy is the rule for those governed by the Indian Special Marriage Act 1872. In any case a woman cannot marry another man while her husband is alive. A wife is entitled to refuse to live with her husband and to claim separate maintenance when her husband marries a second wife.⁷

Note 2.

² *Monji Lal v. Chandrabati*, 11 I.C. 502 : 38 Cal. 700, 706 P.C.; see also *Venkatacharyulu v. Rangacharyulu*, 14 Mad. 316, 318.

³ *Bhagwati Saran v. Parameswari Nandan*, 1942 All. 267 (2) : 1942 A.L.J. 197 ; *Amrithammal v. Vallimayil Ammal*, 1942 Mad. 693 : (1942) 2 M.L.J. 292 F.B. (Congenital idiot can lawfully marry).

⁴ *Purshothamdas v. Purshothamdas*, 21 Bom. 23, 30 ; *Atma Ram v. Banku Mal*, 1930 Lah. 561 : 11 Lah. 598.

⁵ 14 Mad. 316 ; *S. Settappa v. Revanna*, 17 Mys. L.R. 33 ; *Channaveeriah v. Bhadramma*, 1 Mysore 41.

⁶ *Viraswami v. Appaswamy* (1863) 1 Mad. H.C. 375.

⁷ See Sec. 23 (c) below.

3. *Forms of marriage.*—The ancient Hindu Law recognised eight forms of marriage, namely, the Brahma, the Daiva, the Arsha, and the Prajapatya which were the approved forms and the Asura, the Gandharva, the Rakshasa and the Paishacha which were the unapproved forms. The only forms of marriage now recognised are the Brahma and the Asura, the other forms being considered obsolete.¹ Even these two forms have lost their old significance. The old Brahma form which was peculiar to the Brahmins only was the gift of a daughter bedecked and bejewelled with costly ornaments and presents, to a man learned in the Veda and of good conduct whom her father voluntarily invites and respectfully receives. But where the father or other guardian of the bride receives consideration which is technically called the Sulka or the Bride's price to give her in marriage to the bridegroom, the marriage is called Asura, even though it may have been performed according to the rites prescribed for the Brahma form. In the present day, what distinguishes the one from the other is that in the Brahma form it is a gift of the girl pure and simple ; while in the Asura form, it is a sale of the bride for pecuniary consideration called Sulka or the bride's price. The test is whether any consideration is received by the father or other guardian for giving the girl in marriage. It is the father exploiting his power of disposal of his girl in marriage for his own pecuniary benefit in disregard of his parental duty (fiduciary obligation) of bestowing her on a duly qualified person that is discountenanced by the Sastras.² Such being the nature of the prohibition, a stipulation by the father for a *dowry for the girl* or a present of jewels to her, as a condition of giving her in marriage cannot turn such dowry or present into a 'bride price' and make the marriage an Asura.³

Note 3.

¹ *Maharaja of Kolhapur v. Sundaram*, 48 Mad. 1.

² *Manu*, Chap. III, verse 51.

³ *Kailasanatha v. Vadivanni*, 1935 Mad. 740 : 58 Mad. 488 ; *Velayutha v. Suryamurthi*, 1942 Mad. 219 : (1941) 2 M.L.J. 770.

According to Manu 'When the sulka given for the damsel is not taken by the kinsmen for their own use, there is no sale. It is only honouring the bride, and is totally free from sin', Manu, Chap. III, verse 54. Patanjali Sastri, J., observes that if the receipt of a dowry for the girl is to be regarded as a thing prescribed by the Sastras, it would be part of the father's duty to obtain it for her if possible.⁴ The mere giving of a present to the bride or to her mother as a token of compliment to her does not render it an Asura marriage, the taint attaching to this form consisting in the gratuity paid to the giver of the bride.⁵

Hindus belonging to any class may now marry either in the Brahma form or in the Asura form.⁶

Varadakshina.—Though the payment of sulka or the bride's price renders the marriage an Asura one, the payment of varadakshina or bridegroom's price will not render a marriage otherwise in the Brahma form into an Asura marriage. Nevertheless the degrading practice of receiving varadakshina has been condemned by all right-minded people. It is with a view to discourage this pernicious practice of extorting varadakshina from the bride's party that Sec. 10(3) has been enacted in Mysore,⁷ adopting a noteworthy suggestion of G. Sarkar Sastry.⁸

4. *Presumption as to form of marriage*.—When there is a question as to whether a marriage was in the Brahma form or the Asura form, the Court will presume that the marriage was in the Brahma form.¹ But this presumption may be rebutted by showing that the marriage was in the Asura

Note 3.

⁴ 1942 Mad. 219.

⁵ *Chunni Lal v. Surajram*, 33 Bom. 433 : 3 I.C. 765 ; *Authikesavalu v. Ramanujam*, 32 Mad. 512 ; *Kailasanatha v. Vadivanni*, 1935 Mad. 740.

⁶ *Bhaoni v. Maharaj Singh*, 3 All. 738.

⁷ See Sec. 10, Note 15 below.

⁸ *Sarkar's Hindu Law*, 6th edn., p. 636.

Note 4.

¹ *Monji Lal v. Chandrabati*, 38 Cal. 700, 703 P.C.

form.² Both forms of marriage are however recognised as lawful marriages.

The question as to the form of marriage of a female is important in British India because it influences the order of succession to the Stridhana of a female. If the marriage was in the approved form, that is, the Brahma form, it devolves on her husband and his sapindas, whereas if she was married in the unapproved form it devolves on her mother, father and father's heirs in order.³ But in Mysore, the order of succession to the Stridhana of a female varies not according as she was married in the approved or the unapproved form, but to some extent according as she was lawfully married or not.⁴

5. *Guardianship in marriage.*—The Sastras enjoin the marriage of a female before she arrives at puberty and prescribe rules for guardianship in marriage. The right to give a girl in marriage belongs to the following persons in order :— (1) The father, (2) the paternal grandfather, (3) the brother, (4) other paternal relations of the girl in order of propinquity and (5) the mother. The reason why the mother is postponed is that she cannot perform the ceremony of giving the girl in marriage called kanyadana and has to employ some male to perform that ceremony.¹ But it does not mean that she has no voice at all in the selection of a husband for her daughter. Even if there is a paternal

Note 4.

² *Mst. Thakor Dehyee v. Rai Balak Ram*, 11 M.I.A. 139 ; *Chunni Lal v. Surajram*, 33 Bom. 433 ; *Anthikesavalu v. Ramanuja*, 32 Mad. 512 ; *Kamla Prasad v. Murli Manohar*, 1934 Pat. 398 : 152 I.C. 446.

³ *Bai Kesarbai v. Hansraj*, 30 Bom. 431, 451 P.C. ; *Raju v. Ammani*, 29 Mad. 358 ; *Janglubai v. Jetha*, 32 Bom. 409, 412 ; *Govind v. Savitri*, 43 Bom. 173 ; 47 I.C. 883 ; *Javitri v. Gendan Singh*, 1927 All. 767 : 49 All. 779 ; *Chandulal v. Bai Kashi* (1939) Bom. 97 : 1939 Bom. 59.

⁴ See Sec. 12 (1) II and III below.

Note 5.

¹ *Bai Ramkore v. Jamnadas*, 37 Bom. 18 : 17 I.C. 95.

grandfather, the mother as natural guardian of her daughter is entitled to select a husband for her.²

The marriage of a male before he has attained puberty is not contemplated by the Sastras and there are no rules as to who may give a boy in marriage. But a lawful guardian of a male minor may however consent to his marriage.

Marriage without consent of guardian.—Guardianship for the purpose of marriage is not so much a right as a duty and the consent therefore of the guardian is not a condition precedent to the validity of the marriage.³ The texts which prescribe rules for the consent of guardians for the purpose of marriage have been held to be merely directory and not mandatory. Hence, a marriage once performed and duly solemnised though it be without the consent of the guardian has been held to be valid on the basis of the principle of *factum valet*.⁴ Thus where a father has deserted his wife and daughter, the mother can give the daughter in marriage without the consent of the father.⁵ Even where the father is alive and otherwise capable of giving away his daughter, the Court will not declare a marriage invalid, merely because the daughter was given in marriage by the mother without his consent, provided the marriage has been duly solemnised.⁶ But a marriage though duly performed may be declared void and set aside by the Court if it was brought about by force or fraud.⁷

What is stated above applies only where a marriage is done and finally completed. But so long as the marriage

Note 5.

² *Ranganayaki v. Ramanuja*, 35 Mad. 728, 734 : 11 I.C. 570 ; *Mst. Jiwan v. Mula Ram*, 1922 Lah. 112 : 3 Lah. 29.

³ *Khushalchand v. Bai Mani*, 11 Bom. 247.

⁴ 11 Bom. 247 ; *Kasturi v. Chiranjilal*, 35 All. 265 ; *K. C. Chakravarti v. Emperor*, 1937 Cal. 314 : (1937) 2 Cal. 221 (Marriage brought about by misrepresentation to the guardian) ; *Balusu v. Balusu*, 22 Mad. 398 P.C.

⁵ 11 Bom. 247.

⁶ *Venkatacharyulu v. Rangacharyulu*, 14 Mad. 316.

⁷ 14 Mad. 316 ; *Ankamma v. Bamenappa* (1937) 1 M.L.J. 192 ; *Channa-veeriah v. Bhadrappa*, 1 Mysore 41.

has not been performed and the matter is still in the stage of negotiation and incomplete, it is competent to a guardian to sue for an injunction to prevent the marriage of his ward to a person of whom he does not approve. The Court may grant an injunction and restrain the marriage.⁸ As to the re-marriage of a minor widow whose marriage had not been consummated, see Sec. 4, Appendix III.

6. *Marriage ceremonies*.—The ceremonies essential to the validity of a marriage consist of (1) the betrothal, (2) the invocation before the sacred fire and (3) the Saptapadi, that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire. The marriage becomes completed when the seventh step is taken. Till then it is imperfect and revocable.¹ Consummation is not necessary to make a marriage complete and binding.² Even the above ritual need not be gone through in the case of those communities among whom some other form equally effective to complete a marriage prevails by force of custom.³

A betrothal is only a promise to marry, which in the case of minors is given by the father or other legal guardian. But a girl betrothed to one may be validly given in marriage to another person. Where there is such a breach of promise, a suit may be brought for damages against the father or other guardian of the girl who brought about the breach.⁴ A promise to marry cannot be specifically enforced.

Remarriage of widows.—Sec. 3 of the Mysore Hindu Widow's Remarriage Act states that whatever words spoken,

Note 5.

⁸ *Kashi*, in the matter of 8 Cal. 266 ; *Sridhar v. Hiralal*, 12 Bom. 480 ; *Kasturi v. Pannalal*, 38 All. 520 : 36 I.C. 245.

Note 6.

¹ *Brindaban v. Chandra*, 12 Cal. 140, 143 ; *Authikeshavalu v. Ramanuja*, 32 Mad. 512, 519 ; *Chunni Lal v. Surajram*, 33 Bom. 433, 437.

² *Administrator-General of Madras v. Anandachari*, 9 Mad. 466, 470 ; *Emperor v. Munchi Ram*, 1936 All. 11 : 58 All. 402.

³ *Hurry Charn v. Nimai*, 10 Cal. 138.

⁴ *Purshotamdas v. Purshotamdas*, 21 Bom. 23 ; *Khimji v. Narsi*, 39 Bom. 682 : 28 I.C. 408 ; *Jekisondas v. Ranchoddas*, 41 Bom. 137 : 38 I.C. 588.

ceremonies performed or engagements made on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect if spoken, performed or made on the marriage of a Hindu widow and no marriage shall be declared invalid on the ground that such words, ceremonies or engagements are inapplicable to the case of a widow.⁵

7. *Identity of caste*.—Hindu Law requires that the parties to a marriage must belong to the same caste, if the marriage should be valid.¹ They may however belong to different subdivisions of the same caste.²

Anuloma marriage.—A marriage between a male of a higher caste and a female of a lower caste is called an Anuloma Marriage. Though such marriages are now obsolete, they are not invalid, according to Shah, J., because there is no express prohibition against them founded in the law books or in any usage having the force of law.³ Disagreeing with this, it is recently held in Madras, that anuloma marriage being obsolete is invalid under the Hindu Law, Somayya, J., observing that when an institution is shown to be obsolete, there is no need to go further and show that there is an express prohibition against such an institution in some law books or that it is prohibited by usage having the force of law.⁴

Note 6.

⁵ See Appendix III.

Note 7.

¹ *Inderun v. Ramaswamy*, 13 M.I.A. 141, 158 ; *Padam Kumari v. Suraj Kumari*, 28 All. 458 ; *Munni Lal v. Shiana*, 1926 All. 656 ; 48 All. 670.

² *Ramamani v. Kulanthai*, 14 M.I.A. 346 ; *Gopi Krishna v. Mst. Gaggio*, 1936 P.C. 198 ; 58 All. 397 ; *K. C. Chakravarti v. Emperor*, 1937 Cal. 214 (Brahmin Sub-castes).

³ *Bai Gulab v. Jivanlal*, 1922 Bom. 22 : 46 Bom. 871 (Vaishya male and Sudra female) ; *Natha v. Mhta*, 1931 Bom. 89 : 55 Bom. 1 ; *Morarji v. Administrator-General of Mysore*, 52 Mad. 160 (Overruled in 1941 Mad. 513).

⁴ *Subbaramayya v. Venkatasubhamma*, (1941) Mad. 989, 1015 : 1941 Mad. 513.

Pratiloma marriage.—A marriage between a woman of a higher caste and a male of a lower caste is called Pratiloma Marriage. Such a marriage is invalid.⁵

8. *Prohibited degrees of relationship*.—Hindu Law prohibits the marriage between persons related to each other within the prohibited degrees.¹ The following are the rules regarding prohibited degrees :—

(1) The parties to a marriage should not be of the same *gotra* or *pravara*.² In other words, a man cannot marry a girl if his father and the girl's father are both descendants of a common ancestor in the male line. This rule applies only to Dwijas. It does not apply to Sudras, because they have no *gotra* or *pravara*.

(2) The parties should not be Sapindas of each other. This rule applies to all castes. According to the Mitakshara, a man cannot marry a girl if their common ancestor being traced through his or her father is not beyond the seventh in the line of ascent from him or her, or if their common ancestor being traced through their mothers is not beyond the fifth in the line of ascent from him or her.³ In computing the degrees, the common ancestor and the person in question are each to be counted as one degree.

Even in the case of the remarriage of a Hindu widow, the parties must not be related to each other in any degree of consanguinity or affinity which would under Hindu Law render a marriage illegal.⁴

Note 7.

⁵ *Bai Lakshmi v. Kaliarsingh*, 2 Bom. L.R. 128 ; *Kashi v. Jāmnadas*, 14 Bom. L.R. 547 ; *Munnu Lal v. Shiama*, 1926 All. 656 : 48 All. 670.

Note 8.

¹ *Banerjee's "Law of Marriage"*, 5th edn., pp. 70, 269–74, 289.

² *G. Sarkar's "Hindu Law"*, 7th edn., p. 89 ; *R. N. Mukerji v. Shaktipada*, 1936 All. 624 : 58 All. 1053.

³ *Ramachandra v. Vinayak*, 42 Cal. 384, 417 P.C.; *Ramakrishna v. Subbamma*, 1920 Mad. 715 : 43 Mad. 850.

⁴ See Sec. 2, Appendix III.

9. *Presumption as to legality of marriage.*—Where it is proved that a marriage was performed in fact, the Court will presume that it is valid in law,¹ and that the necessary ceremonies have been performed.²

The law presumes against vice and immorality and on this ground presumes strongly in favour of marriage. It will indeed be very hard if strict proof of the marriage ceremony itself is invariably insisted upon years after it took place without any regard to the class to which the parties belong. The law, therefore, makes a departure and relaxes the rigour of the rules of evidence and in the absence of better evidence and of evidence to the contrary, considers it safe to presume marriage on proof of repute and conduct as may be indicated, for instance, by reliable statements of persons most favourably situated for knowing the relationship, the behaviour of the couple towards each other and the treatment accorded to them as husband and wife by their friends and relations and the general reputation in the society of acquaintances and neighbours touching their status.³ But this presumption may be rebutted by proof of facts showing that no marriage could have taken place.⁴ Such a presumption has also no application where it is not possible to have a legal marriage between the parties and an irregular union cannot be turned into a marriage by any amount of ceremonies or by any subsequent enactment.⁵

10. *Marriage expenses.*—The joint family property is liable for the marriage expenses of the coparceners and

Note 9.

¹ *Inderun v. Ramaswamy*, 13 M.I.A. 141, 158; *Pakirgouda v. Gangi*, 22 Bom. 277.

² *Monji Lal v. Chandrabati*, 38 Cal. 700 P.C.; *Administrator-General of Madras v. Anandachari*, 9 Mad. 466; *Appibai v. Khimji*, 1936 Bom. 138 : 60 Bom. 455.

³ *Mi Ma v. Mi Shwe Ma*, 39 Cal. 492 P.C.; *Chandrasekhara v. Sanna-putta*, 33 Mysore 279 : 6 Mys. L.J. 168.

⁴ *Chellammal v. Ranganatham*, 34 Mad. 277 : 12 I.C. 247.

⁵ *Md. Abdul Samad v. Girdhari Lal*, 1942 All. 175, 179.

their daughters, so long as the family remains joint.¹ But a male member who is unmarried at the institution of a suit for partition is not entitled to have a provision made on partition for his marriage expenses apart from the share he is entitled to on partition.² But an unmarried daughter of the family is entitled at a partition to provision being made for her marriage expenses. Thus where a person divides himself from his father and brothers, his share also is liable to provide for the marriage expenses of his unmarried sisters, but not for the future marriage expenses of his brother's daughters.³ In Mysore, however, an unmarried daughter of the family is entitled to a share at a partition equal to one-fourth of the share of a brother and the share to which she is entitled shall be inclusive of, and not in addition to, the legitimate expenses of her marriage including a reasonable dowry or marriage portion.⁴

11. *Effects of marriage*.—It is a leading doctrine of the Mitakshara school that a wife becomes on marriage the sapinda of the husband, and her individuality is merged in him. The wife, by her marriage, is born again in the husband's family, and becomes half the body of the husband. It is by virtue of this doctrine that the husband's sapindas become the sapindas of his wife. The wife's sapindas however, in her father's family do not become the husband's sapindas.¹ Thus the husband and wife become one in the eye of the law so far as spiritual purposes are concerned. But they are not one so far as secular matters are concerned. The wife can hold property of her own and can enter into

Note 10.

¹ *Gopalkrishna v. Venkatanarasa*, 17 I.C. 308 : 37 Mad. 273 F.B.; *Srinivasa v. Tiruvengada*, 23 I.C. 264 : 38 Mad. 556.

² *Ramalinga v. Narayana*, 1922 P.C. 201 : 45 Mad. 489 ; *Venkatrayudu v. Sivaramakrishnayya*, 1934 Mad. 676 : 58 Mad. 126.

³ *Subbayya v. Ananta*, 1929 Mad. 586 : 53 Mad. 84 F.B.

⁴ See Sec. 8 (2), (c) below.

Note 11.

¹ *Janglubai v. Jetha*, 32 Bom. 409, 413.

contracts with others and may sue or be sued in her own name.² Further, according to Sec. 11 (2) of the Act, except when acting as her lawful guardian, her husband shall have no right to or interest in her Stridhana, nor shall he be entitled to control the exercise of any of her powers in relation thereto.³

The wife is bound to live with her husband and to submit to his authority. An agreement enabling her to avoid the marriage or to live separate from her husband if he leaves the village in which she and her parents reside is void being against public policy and contrary to the spirit of the Hindu Law. Such an agreement is no answer to a suit for restitution of conjugal rights by a husband against his wife.⁴ On marriage, the husband becomes the guardian and protector of his wife and is entitled to the enjoyment of her person and society. He is bound to live with his wife and to maintain her.

12. *Divorce*.—Marriage under Hindu Law creates an indissoluble tie between the husband and the wife and neither party can divorce the other. However, divorce is allowed by custom among some of the lower castes.¹ Neither the adultery of either party nor even the fact that the wife has deserted the husband operates as a dissolution of marriage.² As to change of religion, it is provided under the Native Converts' Marriage Dissolution Act, that where a Hindu becomes a convert to Christianity and in consequence of such conversion the husband or the wife of

Note 11.

² See also *Kadiah v. Thimmaraya*, 4 Mys. L.R. 147.

³ See Sec. 11, Note 4 below.

⁴ *Sitaram v. Ahiree*, 11 Beng. L.R. 129; *Tekait v. Basanta*, 28 Cal. 751.

Note 12.

¹ *Kudomee v. Joteeram*, 3 Cal. 305; *Sankaralingam v. Subban*, 17 Mad. 479.

² *Subbaraya v. Ramaswamy*, 23 Mad. 171, 177; *Pakkiam v. Chelliah*, 1924 Mad. 18 : 46 Mad. 839 F.B.; *Gopalkrishna v. Mst. Jaggo*, 1936 P.C. 198 : 58 All. 397; *Banarsi Das v. Sumant Prasad*, 1936 All. 641 : 58 All. 1019.

the convert deserts or repudiates the convert, the Court may on a petition presented by the convert pass a decree dissolving the marriage. Conversion does not operate *per se* as a dissolution of marriage.³

13. *Restitution of conjugal rights*.—After marriage either spouse is entitled as of right to the society of the other. Hence a cause of action arises when one of them withdraws from the society of the other and a suit lies for the restitution of conjugal rights. In a suit by a husband for restitution of conjugal rights it would be a valid defence for the wife to show that circumstances exist which entitle her to refuse to live with him, namely those mentioned in clauses (a) to (e) of Sec. 23 of the Hindu Law Women's Rights Act 1933.¹ As to other instances in which a Court can refuse to order restitution of conjugal rights, see the undermentioned cases.² In a suit for restitution of conjugal rights where the validity of the marriage itself is disputed, the Court cannot raise the presumption that the requisite ceremonies have been performed, but must find specifically whether they were so performed.³

In a suit by a husband for restitution of conjugal rights, the cause of action arises at the place where the husband resides.⁴

Note 12.

³ *Gobardhan v. Jasodamani*, 18 Cal. 252.

Note 13.

¹ See Notes under Sec. 23 below.

² *Gowamma v. Ayodhya Rama Shetty*, 31 Mysore 273 : 4 Mys. L.J. 204 ; *Nandesamma v. Doddasiddappa*, 25 Mysore 260 ; *Moonshee Buzloor Ruheem v. Shumsunnessa Begum*, 11 M.I.A. 551.

³ *Surjyamonee v. Kalikanta*, 28 Cal. 37 ; *Rampiyar v. Deva Rama*, 1923 Rang. 202 : 76 I.C. 475.

⁴ *Venugopal Naidu v. Lakshmi Ammal*, 1936 Mad. 288 : 59 Mad. 392.

CHAPTER VI

COPARCENERS AND COPARCENARY PROPERTY*

PART II

Separate Property, Partition and Adoption

Section 6

(1) *Self-acquisitions deemed to be separate property.*—Property acquired by a member of a joint Hindu family by his own exertions, skill, learning or talents, or acquired in any other manner, without material and direct aid from property belonging to the joint family, shall be deemed to be the separate property of such member, notwithstanding that, at any time previous to, or at the time of his acquiring such property, such member may have been maintained or supported, or have received training or education of any kind (general, special, technical, or other), at the expense of the joint family or of any member thereof.

(2) *Separate property to pass by succession in case of intestacy.*—Such separate property of a person shall, in the event of his dying intestate, pass by succession to his own heirs, male or female.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Coparcenary ; (3) Coparceners ; (4) Undivided coparcenary interest ; (5) Coparcenary property ; (6) Unobstructed and obstructed heritage ; (7) Joint Family Property and Joint Property ; (8) Incidents of Separate Property ; (9) Property inherited from Paternal ancestor ; (10) Property inherited from Maternal grandfather ; (11) Property inherited from collaterals and females ; (12) Share allotted on Partition ; (13) Property obtained by Gift or Will from Paternal ancestor ; (14) Property obtained by Government Grant ; (15) Accretions ; (16) Income from Separate Property ; (17) Recovery of property lost to the family ; (18) Property thrown into Common Stock ; (19) Property jointly acquired by members of a joint Hindu family ; (20) Property held by sole-surviving coparcener ; (21) Partnership business with strangers ; (22) Ancestral business and its incidents ; (23) New business ; (24) Debts of a new business ; (25) Presumptions as to coparcenary and coparcenary property ; (26) Devolution of Coparcenary Property ; (27) Devolution of Separate Property ; (28) Impartible Property ; (29) Incidents of Impartible Property.

* This chapter deals with the nature of coparcenary property and separate property. As to the scope of Sec. 6 of the Act see Note 1 below.

1. *Scope of the section.*—This section declares that all self-acquisitions of a member of a joint Hindu family in whatever manner they may have been acquired shall be deemed to be his separate property, the only condition being that the self-acquisition should have been made without material and direct aid from property belonging to the joint family. The maintenance or support of the member or his receiving training or education of any kind at the expense of the joint family property or of any member thereof at any time previous to or at the time of the acquisition, is not within the meaning of the words ‘material and direct aid from property belonging to the joint family’ in the section. In spite of his receiving such aid at the expense of the joint family or of any member thereof, what he acquires will be deemed his separate property, and such property will pass by succession to his heirs in the event of his dying intestate and not to his coparceners by survivorship.

This section covers all modes of self-acquisition generally. It is broader in scope than the Hindu Gains of Learning Act 1930 of the Indian legislature, and expresses the general idea in a more comprehensive and simple way.

This Act does not amend or modify the Hindu Law of joint family property in any other respect and those rules or incidents of Hindu Law which are not inconsistent with the provisions of this section should be deemed unaffected according to Sec. 2 (2). The main rules or incidents of Hindu Law which are unaffected by the provisions of this section are indicated below.

2. *Coparcenary.*—A joint Hindu family consists of all the descendants in the male line from a common ancestor and includes their wives, sons, and unmarried (and, occasionally, widowed) daughters, who are joint not only in estate, but also in food and worship.¹ A Hindu coparcenary however, is a much narrower body than the joint

Note 2.

¹ *Raghunanda v. Brozo Kishoro* (1876) 1 Mad. 69, 81 P.C.

family. It includes only the sons, grandsons and great-grandsons of the holder of the joint property for the time being, who acquire by birth an interest in the property of the joint family (the coparcenary property).² In other words 'a coparcenary comprises those persons who, by virtue of their relationship have the right to enjoy and hold the property of the joint family, to restrain the acts of each other in respect of it, to burden it with their debts, and at their pleasure to enforce its partition. Outside this body there is a fringe of persons who possess inferior rights such as that of maintenance, or who may, under certain contingencies, hope to enter into the coparcenary'.³

No coparcenary can commence without a common male ancestor, though after his death it may consist of collaterals, such as brothers uncles and nephews, cousins, etc. A coparcenary is purely a creature of law. It cannot be created by act of parties save in so far that by adoption a stranger may be introduced as a member thereof.⁴

3. *Coparcener*.—Whether a person is a coparcener or not depends on the answer to the question whether he can demand a partition of the coparcenary property. If he can, he is a coparcener but not otherwise. 'No female can be a coparcener under the Mitakshara law. Even a wife though she is entitled to maintenance out of her husband's property and has to that extent interest in his property is not her husband's coparcener.'¹ This is so even though she becomes by marriage her husband's sapinda.

When a member of a joint Hindu family is within four degrees of the last holder (counting from and including such

Note 2.

² *Chikkanagamma v. Sivaswamy*, 44 Mysore 473 : 17 Mys. L.J. 481, 484.

³ *Mayne's Hindu Law*, 9th edn., p. 344.

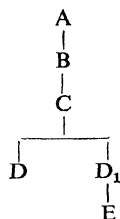
⁴ *Sudarsanam v. Narasimhalu*, 25 Mad. 149, 154 ; see also *Jogeswar v. Ramachandra*, 23 Cal. 670 P.C.

Note 3.

¹ Singaravelu Mudaliar, J., in *Chikkanagamma v. Sivaswamy*, 44 Mysore 473 : 17 Mys. L.J. 481, 484 ; *Punnabibee v. Radha Kishen*, 31 Cal. 476.

ancestor), he can demand a partition, and therefore he is a coparcener. It will be seen that he will have taken an interest in the family property by birth also. Thus a person and his sons, grandsons and great-grandsons constitute a coparcenary with himself. But the son of one of the great-grandsons would be out of the coparcenary. He will enter into the coparcenary on the death of that person (common ancestor), unless his father, grandfather and great grandfather had all predeceased the common ancestor. The reason is that whenever a break of more than three degrees occurs between any holder of property and the person who claims to enter the coparcenary after his death, the line ceases in that direction and the survivorship is confined to those collaterals and descendants who are within the limit of four degrees.

Illustration.—*A* inherits certain property from his father *X*. *B* his son, *C* his grandson, *D* and *D*₁ his great-grandsons and *E* his great-great-grandson by *D*₁ are all members of a joint family. Here *A*, *B*, *C*, *D* and *D*₁ are coparceners. *E* is not, being more than four degrees removed from *A*. Suppose *B* dies first. Then the coparcenary consists of *A*, *C*, *D* and *D*₁. *E* will not enter the coparcenary by *B*'s death because so long as *A* is alive *E* his great-great-grandson cannot be a coparcener with him. Suppose *A* die first. Then *E* will enter into the coparcenary which will then consist of *B*, *C*, *D*, *D*₁ and *E*. Suppose *B*, *C* and *D*₁ die in the lifetime of *A*. The coparcenary will then consist of *A* and *D* only. If *A* dies now *D* becomes the sole-surviving coparcener and the joint family property will pass to him by survivorship. The death of *A* will not introduce *E* into the coparcenary because at the time of *A*'s death *E*'s father *D*₁, grandfather *C* and great-grandfather *B* were all dead.



4. *Undivided coparcenary interest.*—The ownership of coparcenary property is in the whole body of coparceners. No individual member of that family can assert while it remains undivided, that he has a definite share one-third or one-fourth.¹ His interest is a fluctuating one capable of

Note 4.

¹ *Appovier v. Rama Subba Aiyan*, (1866) 11 M.I.A. 75, 89; *Hiriniappa v. Raghavendrappa*, 5 Mys. L.R. 317; *Thimmia v. Bada Thimma*, 19 Mysore 67.

being enlarged by deaths and liable to be diminished by births in the family.² It is only on a partition that he becomes entitled to a definite share.¹ As observed by the Privy Council in Katama Natchiar's case, 'There is community of interest and unity of possession between all the members of the family and upon the death of any one of them, the others take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession'.³

5. *Coparcenary property*.—According to the Hindu Law property may be divided into two classes : (A) Joint Family Property, and (B) Separate Property. Joint family property may be divided according to the source from which it comes into (1) Ancestral property, and (2) Separate property of the coparceners thrown into the common stock.

The term 'Joint Family Property' is synonymous with 'Coparcenary Property', According to this Sec. 6, self-acquired property of a member is also to be deemed his separate property.

6. *Unobstructed and obstructed heritage*.—Property in which a person acquires a right or interest by birth is called unobstructed heritage or Apratibandhadaya. It is called unobstructed or more properly 'vested'¹ heritage, because the accrual of the right to it is not obstructed by the existence of the owner. Thus, property inherited by a Hindu from his father, father's father or father's father's father is unobstructed heritage as regards his own lineal male descendants up to three generations, because they take a right in that property by birth.² Such a heritage is subject to

Note 4.

² *Sudarsanam v. Narasimhalu*, 25 Mad. 149 ; *Chikkanagamma v. Sivawamy*, 44 Mysore 473 : 17 Mys. L.J. 481.

³ (1863) 9 M.I.A. 543, 615.

Note 6.

¹ Candy, J., in *Appaji v. Ramachandra*, 16 Bom. 29, 70 F.B.

² *Mst. Sirthaji v. Alagu Upadhia*, 12 Luck. 273 : 163 I.C. 935.

variation by the birth of co-heirs even subsequent to the time when the inheritance opened.³ But a son, grandson or a great-grandson do not acquire an interest by birth in the separate or self-acquired property of the father, grandfather or great-grandfather (though according to the Mitakshara the son acquires an interest by birth both in the ancestral as well as self-acquired property of the father). As to the difference between the son's rights in property acquired by the father and in property inherited by the father from his ancestors, see the undermentioned cases.⁴ Ancestral property and all kinds of coparcenary property are unobstructed heritages.

Property, the right to which accrues not by birth, but on the death of the last owner without leaving male issue is called obstructed heritage or more properly 'contingent'⁵ heritage, that is, heritage liable to obstruction. The right to it is obstructed by the existence of the owner and arises for the first time on the death of the owner without leaving male issue. Thus property which devolves on parents, brothers, uncles, etc., upon the death of the last owner is obstructed heritage.

Unobstructed heritage devolves by survivorship and obstructed heritage by succession. But there are some cases in which obstructed heritage also passes by survivorship. See Chap. II, Note 5, above. As to cases when the right of survivorship of a coparcener is defeated, see Note 26, below.

Illustrations.—(1) *A* inherits some property from his father. *A* has a son *B*. The property so inherited is unobstructed as regards *B*. *B* acquires a right in the property by birth. On *A*'s death it passes to *B* by survivorship. The result would be the same even if *B* were *A*'s grandson or great-grandson.

Note 6.

³ *Narasimha v. Veerabhadra*, 17 Mad. 287.

⁴ Pal, J., in *Budhkar v. Thakur Prasad*, 1942 Cal. 311, 316, 317 : (1942) 1 Cal. 19 ; *Bahadur Singh v. Girdhari Lal*, 1942 Nag. 39 ; *Ganesh Prasad v. Hazari Lal*, 1942 All. 201 F.B. ; *Balwant Singh v. Rani Kishore*, 20 All. 267 P.C. ; *Mit.*, 1, i, 7.

⁵ 16 Bom. 29, 70 F.B.

(2) *A* inherits certain property from his sister, brother or uncle. The property will be *A*'s separate property. *A* has a son *B*. The property is obstructed in *A*'s hands. *B* does not get any right in it by birth or during *A*'s lifetime.⁶ After *A*'s death it passes to *B* by succession as *A*'s heir, provided he survives *A*.

Note.—In *Thimmiah v. Narayanappa*¹ where the question was whether a son and a grandson by a predeceased son inherit the father's self-acquired property simultaneously, it is observed that both classes of property, that is, separate property and self-acquired property of a person in relation to his sons and grandsons would be classed in the language of the Mitakshara as 'apratibandha' or unobstructed property. Judicial decisions have in effect modified that description in the Mitakshara, with the result that the son or grandson does not take an interest in it by birth and the property is liable to obstruction by the father disposing of it at his will; nor does the property pass to the sons by survivorship which is how Apratibandhadaya devolves. If a son's right in the father's ancestral property (apratibandhadaya) may be called 'perfect', his rights in the father's self-acquired or separate property may be called only an 'imperfect' one, and they have been made more so by the courts.⁸

7. *Joint Family Property and Joint Property.*—Two or more complete strangers may own joint property and be joint-tenants, but they can never constitute a joint Hindu family or hold property as a joint Hindu family. Without the tie of Sapindaship it is impossible for a joint Hindu family to come into existence.¹

Joint property devolves like joint Hindu family property by survivorship and is liable to partition, but the male issue of those who own joint property do not acquire an interest in it by birth as do the male issue of those who own joint family property.

Note 6.

⁶ 20 All. 267 P.C. Contra.—*Mit.*, 1, i, 7.

⁷ 42 Mysore 227 : 15 Mys. L.J. 418, 422.

⁸ See *Sarkar's Hindu Law*, 8th edn., pp. 276, 277 ; 1942 Cal. 311, 316 ; 1942 All. 201 F.B. ; 20 All. 267 P.C.

Note 7.

¹ *Karsandas v. Gangabai*, 10 Bom. L.R. 184 ; *Sudarsanam v. Narasimhalu*, 25 Mad. 149 ; see also *Jogeswar v. Ramachandra*, 23 Cal. 670 P.C. [The principle of joint tenancy is unknown to Hindu Law except in the case of a coparcenary]; *Kishore Dubain v. Mundra Dubain*, 33 All. 665 : 10 I.C. 565.

The distinction between joint family property and joint property comes into prominence only in two cases namely, property inherited from a maternal grandfather (see Note 10, below) and joint acquisitions (see Note 19, below).

8. *Incidents of separate property.*—A member of a joint Hindu family may possess separate property which belongs to him exclusively.¹ Not even his male issue acquire any interest in it by birth. He can dispose of it in any way he likes.² It is not liable to partition and on his death intestate, it passes by succession to his heirs according to the order of heirs in Sec. 4, and not by survivorship to the surviving co-parceners.³ As observed by their Lordships of the Privy Council, ‘The law of partition shows that as to the separate self-acquired property of one member of a united family, the other members of that family have neither community of interest nor unity of possession. The foundation, therefore, of the right to take such property by survivorship fails.’³

9. *Property inherited from paternal ancestor.*—All property inherited by a male Hindu from his father, father’s father and father’s father’s father is ancestral property. The son, grandson and great-grandson of the person who inherits it, acquire an interest in it by birth. If he has no male issue at the time he inherits it, he holds the property as absolute owner thereof and can deal with it as he pleases. But if he has male issue in existence at the time or if they come into existence subsequently, they become entitled to an interest in it by the mere fact of their birth in the family. He cannot then deal with it as he likes. It is important to note that the right which the son, grandson or great-grandson takes at his birth in the ancestral property is wholly independent of

Note 8.

¹ *Annamalai Chetty v. Subramanian Chetty*, 1929 P.C. 1 : 113 I.C. 897.

² *Beerpratap v. Rajendra*, 12 M.I.A. 1, 39; *Balwant Singh v. Rani Kishore*, 20 All. 267 P.C. (case of gift); *Venkatramanappa v. Siddappachari*, 4 Mysore 63.—*Contra* : See *Mit.*, Chap. I, Sec. I, verse 27.

³ *Katama Natchiar’s Case*, 9 M.I.A. 543, 613.

the father.¹ The son's right is equal to that of his father in the ancestral property ; but the father has certain special powers of disposal of ancestral property for certain purposes.² As observed by Sir Shadilal, "The 'ancestral' estate in which under Hindu Law a son acquires jointly with his father an interest by birth, must be confined, as shown by the original text of the Mitakshara to the property descending to the father from his male ancestor in the male line".³ Paramasiva Iyer, J., observed that under the Mitakshara Law, it is only ancestral property that vests as joint family property in the undivided descendants of the deceased ancestor, an ancestor being one of the Pitris, Matris, Pitamahas and Prapitamahas to whom oblations are offered at the annual Shraddha or occasions of ancestral worship.⁴

10. *Property inherited from maternal grandfather.*—In *Venkayamma v. Venkataramanayamma*¹ two brothers who were living as members of a joint family inherited certain property from their maternal grandfather. On the death of one of them leaving a widow, the question arose whether his share in the property so inherited passed to his widow by succession or to his brother by survivorship. Their Lordships of the Privy Council held that the property inherited was joint property in their hands and that the undivided interest of the deceased passed by survivorship to his brother and not by succession to his widow. The rule of survivorship which admittedly governed their other property was held to apply to the inherited property also, in the circumstances of the case. It does not appear that it was contended that the property was 'ancestral' in the

Note 9.

¹ *Ananda Rao v. Vasantha Rao*, 9 Bom. L.R. 595 P.C.

² *Budhkar v. Thakur Prasad*, 1942 Cal. 311, 313 : 46 C.W.N. 425 ; see *Mit.*, Chap. I, Sec. i, verse 27.

³ *Md. Hussain v. Babu Kishna Nandan*, 1937 P.C. 233 : 169 I.C. 1.

⁴ *Chidambariah v. Gopaliah*, 19 Mysore 223.

Note 10.

¹ 25 Mad. 678 P.C.

restricted sense in which it is used in Hindu Law. This question was specifically raised in *Md. Hussain's case*,² where A had inherited some properties from his maternal grandfather and because his relation with his son B was strained, bequeathed the properties. The son contended that his father had no right to dispose of the properties by will, as the properties were the joint family properties of the father and himself. Their Lordships negatived the son's contention. Delivering the judgment of the Privy Council, Sir Shadilal observed that though the word 'ancestor' in its ordinary meaning includes an ascendant in the maternal as well as the paternal line, the property inherited by a person from his maternal grandfather was not one in which a son acquires by birth an interest jointly with his father. Thus, property inherited from a maternal ancestor is not 'ancestral' property in the technical sense, but is his separate property.

11. *Property inherited from collaterals and females.*—Property inherited by a Hindu male from a female, e.g., his mother, sister, etc., or from collaterals, such as a brother, uncle, etc., and from his paternal great-great-grandfather or other more remote paternal ancestor is his separate property.¹ Property inherited by a person from his maternal uncle or from his nephew is also his separate property.²

12. *Share allotted on partition.*—The share which a coparcener obtains on partition of joint family property is his separate property as regards his divided coparceners and other relations, but is ancestral property as regards his male issue only. His male issue take an interest in it by birth whether they are in existence at the time of the partition

Note 10.

² *Md. Hussain v. Babu Kishva Nandan*, 1937 P.C. 233.

Note 11.

¹ See also *Ramachandriah v. Ranga*, 6 Mys. L.J. 297.

² *Karuppai v. Shankaranarayana*, 27 Mad. 300 ; *Chidambariah v. Gopaliah*, 19 Mysore 223 (maternal uncle is not a maternal ancestor).

or are born subsequently.¹ The after-born sons get an interest by birth only in the property as it exists at the time they are begotten and cannot question prior alienations.² If he dies without leaving male issue, it passes to his heirs by succession.³

13. *Property obtained by gift or will from paternal ancestor.*—Where a Hindu instead of allowing his self-acquisitions or separate property to go by descent, makes a gift of it to his male issue or bequeaths it to them by will, the question whether such property is the separate property of the son or whether it is ancestral property in the hands of the son as regards his (son's) male issue is answered differently by the British Indian High Courts.¹ In Mysore, it has been held that it is a question of intention whether property bequeathed by a father to his son should have the incidents of ancestral or separate property.² It is not clear, when no intention is expressed or can be gathered, how the question should be answered. Their Lordships of the Privy Council³ said that the answer to it is to be sought by an interpretation of the text of Mitakshara on the point, namely, 'Whatever else is acquired by the coparcener himself without detriment to his father's estate, or as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs'. Mit., Chap. I, Sec. 4, Para 1.

Note 12.

¹ *Lal Bahadur v. Kanhaya Lal*, 29 All. 244 P.C.; *Basappa v. Hallappa*, 23 Mysore 73 [son born after partition]; *Venkatapathiah v. K. Ramanna Setty*, 19 Mys. L.J. 290.

² *Lingappa v. Siddalingamma*, 13 Mysore 137; *Seetharamusa v. Bidare Thimmappa*, 37 Mysore 457; 10 Mys. L.J. 448.

³ *Bejai Bahadur v. Bhupinder*, 17 All. 456 P.C.

Note 13.

¹ *Jagmohan Das v. Mangal Das*, 10 Bom. 528; *Parsottam v. Jankibai*, 29 All. 354; *Hazari Mal v. Abani Nath*, 17 C.W.N. 280; 18 I.C. 625; *Nagalingam v. Ramachandra*, 24 Mad. 429; *Shyamabhai v. Purshottam Das*, 1925 Mad. 645.

² *Marianna v. Hilarius*, 21 Mysore 114.

³ *Lal Ram Singh v. D.C. of Pratapgarh*, 1923 P.C. 160; 45 All. 596.

Where a person bequeathed his properties individually to his three daughter's sons who were living as members of a joint family, it was held that they took it as separate property though they were members of a coparcenary.⁴ In the case of a bequest to persons constituting a joint Hindu family, by an agnate, unless the terms of the deed indicate that the devisees are to take as coparceners, they will take severally.⁵

14. *Property obtained by Government grant.*—A land was not made subject of partition between members of a joint family as it was at that time under confiscation by Government in view of a sale. But it was subsequently made over to one of them under a fresh grant on payment of a sum of money under the Waste Land Rules. One of the other members of the family claimed his share in it after the grant. It was held rejecting his claim, that he must be held to have relinquished, if he ever had any, all claim to a joint interest in the land, and the acquirer must be deemed to have acquired it from Government subsequently by purchase and hence was his separate property.¹ But if it appears from the grant that it is intended for the benefit of the family, it will be joint family property.²

15. *Accretions.*—Property purchased out of the income of or acquired with the assistance of ancestral property, the proceeds of sale of ancestral property and accumulations of income of ancestral property are all ancestral property.¹

Note 13.

⁴ *Siddayya v. Sannamma*, 9 Mys. L.J. 435 ; *Janakirama v. Nagamony*, 1926 Mad. 273 : 49 Mad. 98 ; *Ram Piari v. Krishna Piari*, 1921 All. 50 : 43 All. 600.

⁵ *Ram Nath. v. Dhanwati Kuer*, 1942 Pat. 136 : 197 I.C. 443 ; *Mt. Bahu Rani v. Rajendra Baksh Singh*, 1933 P.C. 72 : 142 I.C. 3.

Note 14.

¹ *Sidda Setty v. Basappa Setty*, 7 Mys. L.R. 371.

² *Mahant Gobind v. Sitaram*, 21 All. 53 P.C.

Note 15.

¹ *Umritnath v. Gowrinath*, 13 M.I.A. 542 ; *Lal Bahadur v. Kanhaya Lal*, 29 All. 244 P.C. ; *Krishnaswamy v. Rajagopala*, 18 Mad. 73, 83.

The male issue acquire in such ancestral property an interest by birth, whether it accrued prior to or after their birth.²

16. *Income from separate property.*—The income from separate property and purchases made with such income are also separate property.¹ Money due on a policy of life assurance effected by a coparcener on his life was held to be his separate property² being absolutely at the disposal of the insured who can nominate any person by will or other document to receive it.

17. *Recovery of property lost to the family.*—Where the members of a joint family have lost joint family property by being wrongfully dispossessed or adversely kept out of possession by a stranger, and such property is recovered without the aid of joint family funds, the member who recovers it is to get a fourth share in it, the remaining three-fourths being divided equally between himself and the other coparceners.¹ This rule does not apply to cases where the property re-acquired had passed out of the family by voluntary or involuntary alienation in consequence of which the family ceased to have any interest in it. Any subsequent acquisition of it from the purchaser of such property holding under a title derived from the joint family cannot be termed 'recovery', but a purchase out and out, and in such a case the acquirer should not be placed in a worse position than if he had purchased any other property out of his own funds.²

Note 15.

² *Ishri Prasad v. Nasib Kuer*, 10 Cal. 1017, 1021.

Note 16.

¹ *Krishnaji v. Moro Mahadev*, 15 Bom 32.

² *Gajaraja Mudaliar v. Kutiammal*, 18 Mys. L.R. 160 ; *Venkatachaliah v. Kaveramma*, 7 Mysore 53 ; *Rajamma v. Ramakrishniya*, 29 Mad. 121.

Note 17.

¹ *Bajaba v. Trimbak*, 34 Bom. 106 ; *Guttayappa v. Halappa*, 39 Mysore 371 : 11 Mys. L.J. 281.

² 11 Mys. L.J. 281.

18. *Property thrown into common stock*.—Separate property of a member of a joint family may become joint family property if it has been voluntarily thrown by him into the common stock with the intention of abandoning all separate claims upon it.¹ Such property is subject to all the incidents of joint family property.² A clear intention to waive his separate rights must be established. It cannot be inferred from the mere fact of his allowing the other coparceners to use it conjointly with himself, nor from a mere failure to keep separate accounts of his earnings.³ Nor can it be inferred merely on proof that he treated his younger brothers with ordinary kindness, supporting them when they were not earning, helping them to begin making a living for themselves, seeing to their marriage and so forth.⁴

Where members of a joint family possessing joint family property, blend with that, property in which they have separate interests with the intention of abandoning all separate claims in them, the property so blended also becomes joint family property.⁵ Thus where the father as the head of a joint family opened an account with a banker to deposit the income from the family properties, and in the same account deposited his separate earnings also, and there was nothing to show that he discriminated between the income of the joint properties and his personal income, it was held by the Privy Council that the self-acquisitions of the father must be treated as joint family property.⁶ But

Note 18.

¹ *I.T. Commissioner v. Manikavelu & Sons*, 34 Mysore 465 : 7 Mys. L.J. 292.

² *Ram Charn v. Sheo Charn*, 10 M.I.A. 490, 505 ; *Muddan Gopal v. Khikinda Kuer*, 18 Cal. 341 P.C.; *Suraj Narain v. Ratan Lal*, 40 All. 159 P.C.; *Radha Kant v. Nazma Begum*, 45 Cal. 733 P.C. [separate property thrown into common stock].

³ *Vaidyanatha v. Varadaraja*, 1938 Mad. 841.

⁴ *Bhuru Mal v. Jagannath*, 1942 P.C. 13, 18.

⁵ *Rajani Kant v. Jaga Mohan*, 50 Cal. 439 P.C.

⁶ *Lal Bahadur v. Kanhaya Lal*, 29 All. 244 P.C.

on the other hand, as Sir George Rankin⁷ observed: “ Even in the case of a karta mixing his own monies with family monies, the mere fact of a common till or a common bank account, need of itself effect no blending, *so long as accounts are kept*. This can be seen from a careful examination of Lord Buckmaster’s judgment in *Suraj Narain v. Ratan Lal*,⁸ and a more explicit statement will be found in the judgment of Reilly, J., in *Peria Karuppan Chetty v. Arunachellam Chetty*.⁹ ”

A business started by a member may also become a joint family business by being blended with other family property.¹⁰

19. *Property jointly acquired by members of a joint Hindu family*.—If the property is acquired with the aid of joint family property, it becomes also joint family property and the male issue of the acquires take an interest in it by birth.¹

If the property is acquired without the aid of joint family property, such property must be presumed to be joint family property, unless the acquirers intended to hold the property as co-owners between themselves, in which case it would be their joint property.² In *Basappa v. Halappa*,² B and his brothers who were members of a joint family acquired certain property through their joint labours but

Note 18.

⁷ *Nutbhari Das v. Nanilal Das*, 1937 P.C. 61, 66 : (1937) 2 M.L.J. 114.

⁸ 40 All. 159 : 40 I.C. 988 P.C.

⁹ 1927 Mad. 676 : 50 Mad. 582, 591.

¹⁰ *Metharam v. Rewachand*, 45 Cal. 666 : 44 I.C. 269 P.C.; see also *Annamalai Chetty v. Subramanian Chetty*, 1929 P.C. 1 : 113 I.C. 897.

Note 19.

¹ *Umrithnath v. Gowrinath*, 13 M.I.A. 542 ; *Lal Bahadur v. Kanhaya Lal*, 29 Cal. 244 P.C.; see also *Ayyangouda v. Gadigeppa Gowda*, 1940 Bom. 200 : 187 I.C. 873 [adopted son].

² *Basappa v. Halappa*, 23 Mysore 73 ; *Kariyanna v. Rangiah*, 39 Mysore 643 : 12 Mys. L.J. 61 [joint labour of brothers] ; *Kolla Nirasimha Setty v. Nanjamma*, 45 Mysore 460 : 18 Mys. L.J. 461, 464 [joint trade by brothers].

without the aid of any ancestral nucleus. The property was subsequently partitioned and *B* sold his share to some persons. The undivided son of *B* contested the sale and claimed the property as joint family property in which he had an interest by birth. It was held that in the absence of anything to suggest that the brothers agreed to hold the property as co-owners, otherwise than as a joint family, it was joint family property in which the sons of the acquirers obtained an interest by birth.

The presumption is very strong that the property acquired by brothers, who are joint and undivided at the time when such property is acquired, is joint property of the family, and very strong evidence to the contrary would be required.³

20. *Property held by sole-surviving coparcener.*—Where joint family property passes to the sole-surviving coparcener it becomes his separate property. But according to Sec. 8 (1) *d*, it will pass to him subject to the rights to shares of the classes of females enumerated in Sec. 8 (1), which they can enforce according to Sec. 8 (5). Subject to that he can dispose of the property with or without legal necessity. But if a son is born to him afterwards, the son will take an interest in the property, not only from the date of his birth, but while he is in his mother's womb, as it exists at the time of his birth or conception.¹ The son cannot question any alienation made before he was born or begotten or adopted. However if the sole-surviving coparcener makes a will of such property and if a son should then be born to him or adopted by him, the will will be inoperative and the son takes the property by survivorship.² Where the sole-surviving coparcener starts a

Note 19.

³ *Gundu Chidambar v. Dundappa*, 6 Mys. L.R. 73.

Note 20.

¹ *Lingappa v. Siddalingamma*, 13 Mysore 137 ; *Venkatapathiah v. Karidi Ramanna Setty*, 19 Mys. L.J. 290.

² *Venkatanarayana v. Subhamal*, 39 Mad. 107 P.C.

business out of the sale proceeds of a part of the coparcenary property in his hands, the profits of the business, the investments made and properties purchased out of these profits also form part of the ancestral coparcenary property and a son adopted by a widow of a predeceased coparcener can claim a share in such properties as joint ancestral properties of the family.³

21. *Partnership business with strangers.*—Property acquired by a member of a joint family in a trade in partnership with strangers to the family and his share in such partnership assets are the separate property of the member.¹ The presumption of Hindu Law that where a nucleus is proved, all properties standing in the name of its members was acquired out of the family funds and belong to the family, cannot be extended to cases of partnership with strangers, and hence the burden of proof is on him who asserts that the partnership is entered into on behalf of the family.² But where the manager of a joint family is doing business in partnership with a stranger with family funds, the manager will be accountable to the family; the partnership however will be one exclusively between him and the stranger and governed by the Mysore Partnership Act VI of 1936.

22. *Ancestral business and its incidents.*—In Hindu Law even a business is a distinct heritable asset. Where a person dies leaving a business, it descends to his heirs like other heritable property. In the hands of the male issue it becomes ancestral or joint family business and the firm which then consists of the male issue becomes a Joint Family Firm.¹ The joint ownership so created in the male

Note 20.

³ *Ayyangauda v. Gadigeppa Gowda*, 1940 Bom. 200.

Note 21.

¹ *Maloovallappa v. Chinnamma*, 8 Mys. L.R. 150 ; *B. S. Bank, Ltd. v. Khillo*, 1940 Lah. 90 : 187 I.C. 385.

² *Bhuru Mal v. Jagannath*, 1942 P.C. 13 ; 1940 Lah. 90.

Note 22.

¹ *Bahadur Singh v. Girdhari Lal*, 1942 Nag. 39.

issue is the result of the operation of law and does not rest upon contract.² The rights and liabilities of the coparceners constituting such a joint family firm must be gathered from the general rules of Hindu Law and not from the provisions of the Mysore Partnership Act 1936.³

A joint family firm is not dissolved by the death of a member, unlike an ordinary partnership. Male issue of the coparceners take an interest in the family firm by birth as in any other joint family property. The manager of the joint family has an implied authority to contract debts and pledge the credit and property of the family for the purposes of the ancestral business.⁴ Such debts incurred in the ordinary course of business are binding on the family property including the interest of the minor coparceners therein.⁵ Even where it is a Hindu woman that carries on a family business for the benefit of the family, she has authority to pledge the joint family property and credit for the purposes of the business. The only difference between male and female member contracting the debts consists mainly in the degree of proof that is necessary to establish the implied authority of the person to contract the debts and perhaps in regard to the presumptions that can be raised in some instances.⁶

23. *New Business.*—Very different considerations on the other hand apply to the case of a business started newly by a father or other male members of a joint family. Since a new business can rest only on contractual arrangement, a minor coparcener can never be a partner in such a business.

Note 22.

² *Lala Baijnath v. Ram Gopal*, (1937) 1 Cal. 369.

³ See Sec. 5 of the Mysore Partnership Act.

⁴ *Ram Krishna v. Ratan Chand*, 1931 P.C. 136 : 53 All. 190 ; *Mst. Champa v. Off. Receiver, Karachi* (1934) 15 Lah. 9 : 144 I.C. 636 ; *Ramanathan v. Muthuraman*, 1942 Mad. 161 : (1941) 2 M.L.J. 816.

⁵ *Raghunathji v. Bank of Bombay*, 34 Bom. 72 : 2 I.C. 173 ; *Niamat Rai v. Din Dayal*, 1927 P.C. 121 : 8 Lah. 597 ; *Yellappa v. Hanumantharaya*, 17 Mysore 139.

⁶ *Veerappa v. Nurkan Sait*, 30 Mysore 150 : 3 Mys. L.J. 54.

Thus in *Sanyasi Charn Mandal v. Krishnadhan Banerji*¹ where in a joint family consisting of brothers, the new business was started by the adult brothers, their Lordships observed as follows: 'The distinction between an ancestral business and one started like the present after the death of the ancestor as a source of partnership relations is patent. In the one case these relations result by operation of law from a succession on the death of an ancestor to an established business with its benefits and obligations. In the other they rest ultimately on contractual arrangement between the parties.'

24. *Debts of a new business.*—In the case of a joint family business (as distinct from ancestral business) where it is necessary for its proper conduct that money should be borrowed from time to time, it is within the authority of the *Karta* to borrow money for the purpose of the family business.² The question then arises whether the debts contracted for the conduct of such a new business are binding on the minor members of the family? Following the decisions of the Privy Council² it has been held in Mysore in *Sambayya Setty v. Rudrappa*³ that the manager of a joint family has no authority to impose upon a minor member the risk and liability of a new business started by him. The fact that the manager is the father himself makes no difference.³ In *The Bank of Mysore v. M. Veerappa*⁴ it was contended that those Privy Council decisions laid down an unqualified rule that a debt contracted either to start or to run a new business could *never* be binding on the minor or other coparceners, whatever the circumstances.

Note 23.

¹ 1922 P.C. 237 : 49 Cal. 560.

Note 24.

¹ *Abdul Majid Khan v. Saraswati Bai*, 1934 P.C. 4 : 38 C.W.N. 201.

² *Sanyasi Charan v. Krishnadhan Banerji*, 1922 P.C. 237 : 49 Cal. 560 ; *Benares Bank v. Hari Narayan*, 1932 P.C. 182 : 54 All. 564.

³ 42 Mysore 163 : 14 Mys. L.J. 491.

⁴ 45 Mysore 26 : 18 Mys. L.J. 113, 123.

may be. The learned Judges did not accept that contention. They find that apart from the plea that the loan was contracted for a new business, there was no plea of the binding nature of the debt on the ground of necessity or benefit of the family raised or considered in those Privy Council decisions, nor was any such plea raised or made out in Sambayya Setty's case. On the other hand there is sufficient material in the judgment in Sambayya Setty's case to suggest that if a plea of necessity or benefit to the family had been set up and proved the result would have been quite different. In the exhaustive and well reasoned judgment in *The Bank of Mysore v. M. Veerappa*,⁵ Abdul Ghani, Off. C.J., lays down that the sons are not liable for the payment of a loan contracted by a father for a new business *unless the transaction was for the benefit of the family and the benefit of the estate or was supported by legal necessity*. In *Ram-nath v. Chiranji Lal*⁶ Sulaiman, C.J., observes: 'The fact that it was required for a new business would not be any justification. If in addition thereto, it could be shown that there was either a pressure or necessity to continue that business as it was the mainstay of the family, or that the particular transaction was at the time beneficial to the family and the family estate, the transaction would be supported, but of course on the latter ground'. *Subramanyam Chetty v. Bank of Mysore*⁷ practically takes the same view. The Patna and Madras High Courts also hold the same opinion.⁸ In these days when trade has gradually ceased to be the occupation of any particular caste as of old, the law laid down in *The Bank of Mysore v. M. Veerappa* is conducive to progress.

Note 24.

⁵ 18 Mys. L.J. 113, 125.

⁶ 1935 All. 221 : 57 All. 605 F.B.; see also *Budhkaran v. Thakur Prasad*, 1942 Cal. 311 : (1942) 1 Cal. 19 ; *Bahadur Singh v. Girdhari Lal*, 1942 Nag. 39.

⁷ 36 Mysore 325 : 9 Mys. L.J. 102 ; but see *Dasappa v. Nanjundiah*, 16 Mys. L.R. 103 and 123 F.B.

⁸ *Chotey Lal v. Rai Bahadur*, 17 Pat. 386 ; *Natarajan v. Lakshman*, 1937 Mad. 195 ; *Venkateswara Rao v. Ammayya*, 1939 Mad. 561.

In Mysore it is recognised from a long time that 'benefit of the family' is something different from 'legal necessity' and that a loan contracted or an alienation made for both the objects is binding on the other members of the family.⁹ Where the income of the family is insufficient to maintain the members, a father or manager is no doubt entitled to alienate or encumber any family property in an attempt to enhance the income of the family.¹⁰ It would then be a case of legal necessity. But where the family income is quite enough to maintain all the members of the family and also to save a portion, embarking on a new business after contracting a loan with a view to augment the income or to provide for more luxuries for the family should not be treated as one which is for the 'benefit of the family' so as to render the shares of the minor coparceners liable,¹¹ nor will it be a case of necessity. In the undermentioned case, where property was mortgaged to start a valuable mining business which in the result prospered, so that a comparatively poor family was raised to affluence within the course of a few years, it was held that the borrowing could not be justified on the ground of 'necessity', but could and would on the ground of 'benefit to the estate'.¹²

25. *Presumptions as to coparcenary and coparcenary property*.—Where in a suit, property is claimed on one side as self-acquired and is disputed on the other side as joint family property and *vice versa*, the question arises upon whom the burden of proof lies. The following gives an idea as to the law on the point:—

Note 24.

⁹ *Sanganna v. Chinnavenkatappa*, 25 Mysore 47; *Muddachari v. Kenchayya*, 29 Mysore 131; 2 Mys. L.J. 70; *Dodda Moga v. Narayana-bhatta*, 2 Mys. L.J. 157; *Durgappa v. Rudramma*, 18 Mys. L.J. 140, 154; *Venkata v. Gade Subbiah*, 1936 P.C. 283.

¹⁰ *Dasappa v. Nanjundiah*, 16 Mys. L.R. 123 F.B.

¹¹ 45 Mysore 26; 18 Mys. L.J. 113, 129; *Palaniappa v. Devasikhamony*, 40 Mad. 709, 719 P.C.

¹² *Bahadur Singh v. Girdharilal*, 1942 Nag. 39.

(1) The normal state of every Hindu family is joint in food, worship and estate. The presumption until the contrary is proved is that a joint family continues joint.¹ A person admitting to have been joint and alleging separation must therefore take upon himself the burden of proving that partition.² The presumption of union is stronger in the case of brothers than in the case of cousins and becomes weaker as you go farther from the founder of the family.³

(2) There is no presumption that a family because it is joint possesses joint property or any property at all.⁴ This has to be shown by affirmative evidence.⁵ But where it is proved or admitted that a family possesses joint property, the presumption is that all the property of which they are possessed is joint. If therefore any member claims any portion of the property as his separate property the burden lies upon him to show that it was acquired by him in circumstances which constitute it his separate property. This may be done in a way by showing that the income of the existing ancestral property was utilised in other ways.⁶ If he adduces no evidence the presumption that the property was joint family property must prevail.⁷ Where plaintiffs, claiming certain property from their uncles as their father's self-acquisitions, did not show that their father kept his own

Note 25.

¹ *Nageswar Baksh v. Ganesh*, 56 I.C. 306 : 42 All. 368, 381 P.C.; *Rai Shadi Lal v. Lal Bahadur*, 1933 P.C. 85 : 142 I.C. 739 ; *Chikkapapanna v. Narasiah*, 37 Mysore 219 : 10 Mys. L.J. 261 ; *Karianna v. Rangiah*, 39 Mysore 643 : 12 Mys. L.J. 61.

² 37 Mysore 219.

³ *Yellappa v. Thippanna*, 1929 P.C. 8 : 53 Bom. 213 ; *Pirithi Pal v. Mst. Suraj Kunwar*, 1940 Oudh 269 : 187 I.C. 179.

⁴ 39 Mysore 643 ; *Kamalakant v. Madhavji*, 1935 Bom. 343 : 59 Bom. 573.

⁵ Mr. M. R. Jayakar in *Nisar Ahmed v. Mohan Manucha*, 1940 P.C. 204, 208 : 191 I.C. 94.

⁶ *Sher Makomed v. Ramratan*, 1938 Nag. 87 : 171 I.C. 572.

⁷ *Madho Tiwari v. Mata Din*, 10 Luck. 61 : 149 I.C. 244 ; *Bhuru Mal v. Jagannath*, 1942 P.C. 13. [No such presumption in the case of a business by a member].

funds distinct from those of the family or that it was acquired by means of such funds, it was held that the burden was not discharged by them.⁸ Similarly where the eldest brother of a family claimed certain property to be his self-acquisition, it was held that the mere fact that the property was purchased in his name and that Kandayam receipts and other documents are in his name and possession do not prove that he is the sole-owner and that his brother's rights to the property were excluded.⁹ It was also held that all these do not raise any presumption adverse to the other brothers and are not inconsistent with the notion of its being joint property. But if in addition to these circumstances there are other facts namely, that all the coparceners are living separately, have dealings of their own without reference to the other members of the family, the burden of proving that such property is joint will lie on him who alleges that it is joint.¹⁰

The position is rather different in regard to a business carried on by an individual coparcener. Though a business, if it belongs to a Hindu joint family, is an item of joint family property, special considerations apply to the question whether or not a business belongs to the family or to the individual member who carries it on. As Sir George Rankin observes, 'whether or not it can be said that if a joint family is possessed of some joint property there is a presumption that any property in the hands of an individual member is not his separate individual property but joint property, no such presumption can be applied to a business'.¹¹

If a joint family possessed property which was admittedly joint, the presumption would be that it continues to be joint,

Note 25.

⁸ *Soobiah v. Nanjappa*, 10 Mys. L.R. 387.

⁹ *Thimmiah v. Hiriniappa*, 15 Mys. L.R. 59.

¹⁰ *Venkatramanna v. Doddapapanna*, 14 Mysore 278; *Dhurm Das v. Shama Sundari*, 3 M.I.A. 229, 240; *Gopee Krist v. Gungapershad*, 6 M.I.A. 53; *Johnston v. Gopal Singh*, 1931 Lah. 419; 12 Lah. 546, 555; see also *Atar Singh v. Thakur Singh*, 35 Cal. 1039 P.C.

¹¹ *Bhuru Mal v. Jagannath*, 1942 P.C. 13, 17.

and the burden would lie upon him who claims it as his self-acquisition.¹²

(3) Where it is proved or admitted that a partition has already taken place, the burden lies upon him who alleges that a property is still joint property to prove it.¹³ Where one of the family properties was alleged to have been reserved for future partition and left in possession of one of the coparceners, it was held that the plaintiff who was out of possession was bound to prove that the possession of the coparcener was on behalf of the whole family and that the members of the family were all receiving their share of the produce.¹⁴

(4) There is no presumption that property acquired by an individual member of a joint family is joint family property, unless it can be traced to any family nucleus, admitted or proved, and the burden of showing it is on the party who asserts that it is joint family property.¹⁵ It is more so where the nucleus is small and unyielding.¹⁶ In order to give rise to the presumption, the nucleus must be shown to be such that with its help the property claimed to be joint could have been acquired.¹⁷

The burden of proving that a business carried on by an individual member of a joint Hindu family, was begun or carried on with the assistance of joint family property, lies upon the plaintiff who claims a share in the business. The burden of proving that the business was separate in its inception cannot be cast upon the defendant who asserts it.¹⁸

Note 25.

¹² *Nanjundappa v. Subba Rao*, 4 Mys. L.R. 202; *Chikkabyamma v. Nanjanna*, 15 Mys. L.R. 135.

¹³ *Vinayak v. Dattoo*, 25 Bom. 367.

¹⁴ *Mala Gowda v. Gange Gowda*, 7 Mysore 23.

¹⁵ *Kariyanna v. Rangiah*, 39 Mysore 643; 12 Mys. L.J. 61; *Annamalai Chetty v. Subramanian Chetty*, 1929 P.C. 1: 113 I.C. 897; *Dolumal v. Parmeswari*, 1940 Sind 74: 190 I.C. 373.

¹⁶ *Intoor Polia v. Iyamangala Rudrayya*, 43 Mysore 38: 16 Mys. L.J. 178.

¹⁷ *Girdhar Lal v. Hargovindas*, 1937 Bom. 446: 171 I.C. 623.

¹⁸ *Bhuru Mal v. Jagannath*, 1942 P.C. 13.

(5) Onus will determine the matter in a case only if the court finds the evidence on both sides so evenly balanced that it cannot come to a definite conclusion. The question of onus at the close of a case becomes important only if the circumstances are so ambiguous that a definite conclusion is impossible without resorting to it.¹⁹ The need for placing the onus does not at all arise, if the court after hearing and weighing the evidence can come to a definite conclusion.

26. *Devolution of coparcenary property.*—On the death of a coparcener his interest in the coparcenary property, in which he had community of interest and unity of possession with the other coparceners, passes by survivorship to them.¹ But the right of a coparcener to take by survivorship is defeated in the following cases.—

(1) Where the deceased coparcener has sold or mortgaged his undivided interest,² but not disposed of it by gift or will.³ But where the father makes a gift of a portion of family property with the concurrence of all the sons, the sons of one of those sons cannot question the validity of the gift.⁴

(2) Where the interest of the deceased coparcener has been attached in his lifetime in execution of a decree against him.⁵ But a mere decree obtained by a creditor not followed up by an attachment in the lifetime of the debtor (coparcener),

Note 25.

¹⁹ *Sime Darby & Co. v. Off. Assignee*, 1928 P.C. 77 : 107 I.C. 233 ; *Yellappa v. Thippanna*, 1929 P.C. 8 : 53 Bom. 213.

Note 26.

¹ *Katama Natchiar's Case*, 9 M.I.A. 543.

² *Mariappa v. Thimmiah*, 12 Mysore 18 ; *Thimmiah v. Bada Thimma*, 19 Mysore 67.

³ *Mallamma v. Boriah*, 21 Mysore 46 (gift) ; *Gudiappa v. Venkatramanappa*, 28 Mysore 15 (gift) ; *Lakshman v. Ramachandra*, 5 Bom. 48 P.C.

⁴ *Nanjundiah v. Sankarappa*, 11 Mys. L.R. 157.

⁵ *Din Dayal v. Jagdeep Narain*, 3 Cal. 198 P.C. ; *Thumbay Gowda v. Syed Buran*, 19 Mysore 142 (attachment in lifetime—sale after death).

will not defeat the right of survivorship of the other coparceners,⁶ unless the debtor stood in the relation of father, grandfather or great-grandfather to the surviving coparceners.⁷ The exception in the last case is made on the ground of the pious obligation of a son to discharge his father's debt, whether the debt is contracted before or after the birth of the son.⁸

[*Note*.—Their Lordships of the Privy Council have laid down that the liability of the sons for the personal debts of the father which are not contracted for illegal or immoral purposes exists whether the father be alive or dead.⁹ The pious obligation to pay such debts extends to the grandson as well as the great-grandson, and their liability is coextensive with that of the son.¹⁰ But in Mysore it is held in *Kala v. Javare Gowda*¹¹ that the pious obligation of the son does not arise during the lifetime of the father. This view is more in conformity with the Hindu Law texts on the point. Setlur, J., delivering the leading judgment of the Full Bench holds that the liability of a Hindu son for the debts of his father does not arise as long as the debtor is himself alive and is not so disabled by disease or other physical disability as not to be able to discharge it himself or has been absent so long as to raise a presumption of death.¹² This doctrine of pious obligation applies only to money debts and not to mortgage debts, a mortgage being an alienation of interest possessed in the mortgaged property and not a mere debt,¹³ and hence in a suit on a mortgage executed by a Hindu father, even if the father is dead, it would be the duty of the creditor to prove that the debt was borrowed for legal necessity or benefit of the family. The result, so far as Mysore goes, is that 'when the father is alive, the son can challenge a personal

Note 26.

⁶ *Veerabasaviah v. Ramappa*, 6 Mysore 40; *Venkatappa v. Mariappa*, 8 Mysore 108; *Nanjappa v. S. L. S. Bank*, 17 Mysore 39 (attachment before Judgment—No decree in lifetime); *Suraj Bansi Kuer v. Sheo Prasad*, 5 Cal. 148 P.C.; *Madho Prasad v. Mehrban Singh*, 18 Cal. 157 P.C.

⁷ *Rama v. Subramanya Jois*, 5 Mysore 69 (crops raised by son subsequent to decree also are assets liable under the decree); *Subbegowda v. Kodandarama Setty*, 11 Mysore 84 (do.); *Venkataramanayya v. Iyyappa Reddy*, 5 Mysore 81; *Narayanadaswamy Chetty v. Gangadharappa*, 7 Mysore 56; *Lingamma v. Dyavanna*, 10 Mysore 71; *Chikka Naika v. Ranganna*, 21 Mysore 212; *Rama Chetty v. Kapoor Chand*, 32 Mysore 175 : 5 Mys. L.J. 46.

⁸ *Thippanna v. Rudranna*, 16 Mys. L.J. 47, 52.

⁹ *Brij Narain v. Mangla Prasad*, 1924 P.C. 50 : 46 All. 95.

¹⁰ *Masit Ullah v. Damodar*, 1926 P.C. 105 : 98 I.C. 1031; *Lanke Hanumanthiah v. Ramayya*, 36 Mysore 416 : 9 Mys. L.J. 455.

¹¹ (1910) 15 Mysore 233 F.B.

¹² *Ibid.*, p. 242.

¹³ *Nanjiah v. Chowde Gowda*, 41 Mysore 382 : 14 Mys. L.J. 510.

debt of his father as not binding on him or on his interest in the family property, whether the debt be one contracted after the birth of the son or prior to it, so long as it is merely a personal debt not charged on the property'.¹⁴ Hence in Mysore, so long as the father is alive, the son practically stands, in this respect, to the father, in the same relationship as any other coparcener, such as a nephew or brother. But after the father is dead, the pious obligation of the son would come in and matters would be different.]

An attachment before judgment of the undivided interest of the coparcener not followed by a decree in his lifetime does not defeat the right of survivorship of the others.¹⁵

(3) Where the interest of the deceased coparcener has vested in the Official Assignee on his insolvency.¹⁶

27. *Devolution of separate property.*—The separate property of a person in the event of his dying intestate passes by succession to his heirs male or female, according to the order of succession prescribed in Sec. 4. It does not pass by survivorship like coparcenary property. According to this Sec. 6, a person's self-acquisitions are also deemed his separate property, and hence both devolve according to the same order of succession. Their Lordships of the Privy Council observed in Katama Natchiar's case that if a different rule was to be applied to the descent of self-acquired property from that applying to the descent of other separate property, those who contended for that proposition had to make it out.¹ But in view of Sub Sec. (2) of this section, such a contention cannot even be raised.

28. *Impartible property.*—An estate which is partible by nature may acquire the character of impartibility under the

Note 26.

¹⁴ Abdul Ghani, J., in *Thippanna v. Rudranna*, 16 Mys. L.J. 47, 53.

¹⁵ *Nanjappa v. S. L. S. Bank*, 17 Mysore 39; *Ramanayya v. Rangappayya*, 17 Mad. 144; *Kaliyanna v. Masayappa* (1942) 2 M.L.J. 750.

¹⁶ *Seetharama v. Off. Receiver*, 1926 Mad. 994 : 49 Mad. 849 F.B.; *Gouri Shankar v. Off. Receiver*, 1932 Lah. 151 : 13 Lah. 464.

Note 27.

¹ See also *Thimmiah v. Naranappa*, 42 Mysore 227 : 15 Mys. L.J. 418, 422.

terms of a grant by Government, or by custom either territorial or of the family. Where an estate is alleged to be impartible by custom, the custom must have been an ancient and invariable one.¹ Ancient Zamindaries which partake of the nature of Raj or Sovereignty, Palayams in the Madras Presidency,² Royal grants of revenue such as Jaghirs,³ etc., are instances of impartible properties.

Where property is held in coparcenary by a joint Hindu family, there are ordinarily three rights vested in the coparceners—the right of joint enjoyment, the right to call for partition and the right to survivorship. But where impartible property is the subject of such ownership, that is, by a joint Hindu family, the right of joint enjoyment and the right of partition are, from the nature of the property, incapable of existence. But there being nothing in the nature of the property inconsistent with the right of survivorship, it may be presumed that that right remains.⁴

It must be remembered, that in the case of property which is impartible by custom, everything beyond the custom is regulated by the general law ; and as the custom of impartibility does not touch the succession, the successor to an ancestral impartible estate falls to be designated according to the ordinary rule of the Mitakshara, and it devolves upon that person who being in fact and in law joint in respect of the estate is also the senior member in the senior line.⁵ The birthright of the senior member to take by survivorship still remains and the right is one which is capable of being

Note 28.

¹ *Martand Rao v. Malhar Rao*, 1928 P.C. 10 : 55 Cal. 403.

² *Bajjnath v. Tej Bali Singh*, 1921 P.C. 62 : 43 All. 228 ; *Kachi v. Kachi*, 28 Mad. 508 P.C.

³ *Raghoji Rao v. Lakshman Rao*, 36 Bom. 639 P.C.; *Durga Prasad v. Brajanath*, 39 Cal. 696 P.C.

⁴ 28 Mad. 508 P.C.; 1921 P.C. 62; *Konammal v. Annadana*, 1928 P.C. 68 : 51 Mad. 189.

⁵ 1921 P.C. 62 ; *Shibaprasad v. Prayag Kumari*, 1932 P.C. 216 : 59 Cal. 1399 ; *I. T. Commissioner v. Krishna Kishore*, 1941 P.C. 120, 123 : 196 I.C. 707.

renounced and surrendered. Though the co-ownership of the joint member may be 'in a sense' only, carrying no present right to joint possession, if the question be whether the Hindu undivided family or the present holder is owner of the estate, the answer of the Hindu Law is that it is joint family property.⁶

Where an impartible estate is the self-acquired property of the holder being acquired by him or his branch, the other undivided members take no interest in it and on his death it passes by succession as his separate property.⁷

29. *Incidents of impartible property*.—(1) The holder of an impartible estate can alienate it by gift or will, even if the estate is ancestral, unless such a power of alienation is excluded by any special custom. No coparcener can prevent alienations of the estate by the holder for the time being.¹

(2) The income of an impartible estate is not income of the undivided family but is the income of the present holder notwithstanding that he has sons from whom he is not divided. Where the last holder of an impartible estate had, out of the income, accumulated considerable property movable and immovable, and the question was whether this formed an accretion to the impartible estate by reason that it had been entered in the same books of account as the estate transactions, it was held that there is no accretion at all, Lord Buckmaster observing that the income differs in no way from property that he might have gained by his own exertions or that had come to him in circumstances entirely dissociated from the ownership of the impartible

Note 28.

⁶ 1941 P.C. 120, 123.

⁷ *Katama Natchiar v. Raja of Sivaganga*, 9 M.I.A. 539, 582; *Periaswami v. Periaswami*, 1 Mad. 312 P.C.

Note 29.

¹ *Sartaj Kuari v. Deoraj Kuari*, 10 All. 272 P.C. (gift); *Protapchandra v. Jagadishchandra*, 1927 P.C. 159; 54 Cal. 955.

estate.² Thus the principle applicable to ordinary joint family property that the income equally with the corpus forms part of the family property if blended with it, does not necessarily apply to the income from impartible property.

(3) *Maintenance of junior members.*—The right of a junior member to maintenance is not ‘of the nature of a real right’ as he is not ‘a person who was in some way an actual co-owner of the estate’.³ The ordinary right of a junior male member to maintenance out of the joint family property is incompatible with the custom of impartibility.⁴ However, just as the impartibility is the creature of custom, so custom may and does affirm a right to maintenance in certain members of the family.⁵

Rights of maintenance out of an impartible family estate—however little they may be and to whichever member they may be extended—would not be enjoyed or enjoyable by any one who had ceased to be joint in respect of the estate, ‘unity of ownership’ being only severable by relinquishment on the part of the junior member.⁶ Thus apart from custom and relationship, junior members of the family have no right to maintenance out of the ancestral estate.⁷ It has been held that sons of the holder thereof are entitled, by custom, to maintenance out of the estate.⁸ Proof of special custom would be required to extend the

Note 29.

² *Jagadamba v. Narain*, 1923 P.C. 59 : 77 I.C. 1041 ; *Shibaprasad v. Prayag Kumari*, 1932 P.C. 216 : 59 Cal. 1399 ; *Hargobind v. Collector of Etah*, 1937 All. 377 : 169 I.C. 744.

³ *Baijnath v. Tej Bali*, 1921 P.C. 62 : 43 All. 228.

⁴ 1932 P.C. 216 ; *Venkatalinga v. Parthasarathy*, 1942 Mad. 558.

⁵ *Rama Rao v. Raja of Pittapur*, 41 Mad. 778 P.C. ; 1942 Mad. 558.

⁶ *I. T. Commissioner v. Krishna Kishore*, 1941 P.C. 120, 126, 127 : 196 I.C. 707 ; *Collector of Gorakhpur v. Ram Sundar Mal*, 1934 P.C. 157 : 56 All. 468 ; 1923 P.C. 59.

⁷ *Yarlagadda v. Yarlagadda*, 24 Mad. 147 P.C. ; 41 Mad. 778 P.C. ; *Protapchandra v. Jagadishchandra*, 1927 P.C. 159.

⁸ *Baijnath v. Tej Bali Singh*, 1921 P.C. 62 ; 1932 P.C. 216.

right beyond the sons of the last holder.⁹ Illegitimate sons of junior members have no right to maintenance under the Hindu Law.¹⁰

Where impartible property is the self-acquired property of the holder, his son is not entitled to maintenance out of it.¹¹

(4) Succession is governed by the rules which govern succession to partible property, because the custom of impartibility does not touch the succession ; it will however descend to a single heir only. In determining the single heir, the rule of primogeniture furnishes a ground of preference. Ordinarily an impartible estate descends by the rule of lineal primogeniture and not the general primogeniture.¹² An Aurasa son excludes an illegitimate son or an adopted son.¹³

In the absence of custom a female cannot inherit an impartible ancestral estate, governed by the Mitakshara, where there are male members of the family qualified to succeed to the estate.¹⁴ But where she is the widow of the last survivor, the law of succession to separate property applies and she can succeed as in the case of partible property.¹⁵

Note 29.

⁹ *Maharaja of Jeypore v. Vikrama Deo*, 52 I.C. 333 : 24 C.W.N. 226 P.C.; 1927 P.C. 159.

¹⁰ *Krishna Yachendra v. Rajeswara Rao*, 1942 P.C. 3 : 44 Bom. L.R. 551.

¹¹ *Subbayya v. Marudappa*, 1936 Mad. 828 : (1937) Mad. 42 ; *Hargobind v. Collector of Etah*, 1937 All. 377 : (1937) All. 292 ; *Venkatalinga v. Parthasarathy*, 1942 Mad. 558.

¹² *Debi Baksh Singh v. Chandrabai*, 32 All. 599 P.C.

¹³ *Jogendra v. Nityanund*, 18 Cal. 151 P.C.; *Sahebgowda v. Siddangowda*, (1939) Bom. 314 : 1939 Bom. 166 F.B.

¹⁴ *Chintaman v. Mst. Nowlukho*, 1 Cal. 153 P.C.

¹⁵ *Raja Lakshmi Debi v. Sri Raja Surya*, 20 Mad. 256 P.C.; *Tara Kumari v. Chaturbhuj*, 42 Cal. 1179 P.C.; *Mst. Parbati v. Chandrapal*, 31 All. 457 [In default of widow, to the daughter] ; *Chunilal v. Jai Gopal*, 1936 Lah. 55 : 17 Lah. 378.

CHAPTER VII

ENJOYMENT OF COPARCENARY PROPERTY

SYNOPSIS

Note.—(1) Manager of a joint Hindu family ; (2) Manager's liability to account on Partition ; (3) Manager's power to contract debts for family business ; (4) General powers of manager of family business ; (5) Manager's power to give valid discharge for debts ; (6) Manager's power to acknowledge debts ; (7) Compromise by manager ; (8) Manager's power regarding suits ; (9) Decree against manager and *res judicata* ; (10) Promissory Note executed by manager ; (11) Manager's power of alienation of coparcenary property ; (12) Burden of proof of necessity or benefit ; (13) Subsequent alienee and burden of proof ; (14) Alienation by all major coparceners and presumption of legal necessity ; (15) Consideration in part applied for purposes of necessity ; (16) Who may alienate coparcenary property ; (17) Alienation of coparcenary property by Father ; (18) Alienation by sole-surviving coparcener ; (19) Alienation by junior coparceners ; (20) Alienation of undivided coparcenary interest ; (21) Position of coparcener who has alienated his undivided interest ; (22) Rights of purchaser of coparcener's interest ; (23) Insolvency of coparcener ; (24) Who may dispute alienations ; (25) After-born son's right to impeach alienations ; (26) Suit to set aside alienations ; (27) Limitation for setting aside alienations.

1. *Manager of a joint Hindu family.*—The father or other senior coparcener for the time being is ordinarily the manager of the property belonging to the joint family.¹ The manager of a joint family is called the *karta* of the joint family.

In an undivided Hindu family not only the concerns of the joint property, but whatever relates to the commonsality and their religious duties and observances must be regulated by its members or by the manager to whom they have expressly or by implication delegated the task of regulation.²

Note 1.

¹ *Suraj Bansi Koer v. Sheo Prasad*, 5 Cal. 148, 165 P.C.; *Thandavaraya v. Shanmugam*, 32 Mad. 167 : 2 I.C. 34 ; *Mallappa Setty v. Baliah Naidu*, 6 Mysore 17 ; *Javare Gowda v. Mari Gowda*, 28 Mysore 286 : 1 Mys. L.J. 72.

² *Raghunanda v. Brozo Kishore*, 1 Mad. 69 P.C.

The manager of a joint Hindu family has no proprietary interest or right of enjoyment of the family property larger than that of any other coparcener. He has however, a special power of disposition of the family property including the interest of the other coparceners for purposes binding on the family, such as, for legal necessity or benefit of the family.³

The manager has control over the income and expenditure and is the custodian of the surplus if any. His position is not that of an agent,⁴ nor is it precisely that of a trustee.⁵ As observed by Krishnaswamy Iyengar, J., 'Neither a father nor a manager is in law accountable as a trustee. Neither of them is legally bound to keep or render accounts. Neither of them is under a duty to save, economise or invest the funds of the family. They cannot be called upon to account for acts of negligence. In the distribution of the family income they are guided not by the quantum of the share of the individual members but by their actual needs as conceived by them'.⁶ Hence it is that an alienation of family property by a manager even when it is not justified by legal necessity, is not in the nature of a breach of trust.⁷

2. *Manager's liability to account on partition.*—The manager is liable to account on partition only for assets which he actually gets in and not for what he ought or might have got in if he had managed the family property with greater skill and diligence.¹ He is liable to account to the

Note 1.

³ *Hanuman Prasad v. Mst. Babooee*, 6 M.I.A. 393; *Daulat Ram v. Meherchand*, 15 Cal. 70 P.C.; *Gharib Ullah v. Khalik Singh*, 25 All. 407, 415 P.C.; *Mari v. Basappa*, 10 Mys. L.R. 68; *Maruliah v. Chikkaveeranna*, 2 Mysore 76.

⁴ *Srikant Lal v. Siddeswari Prasad*, 1937 Pat. 455; 16 Pat. 441.

⁵ *Annamalai v. Murugesu*, 26 Mad. 544, 553 P.C.; *Perrazu v. Subbarayudu*, 1922 P.C. 71; 44 Mad. 656.

⁶ *Lingayya v. Punmayya*, 1942 Mad. 183; (1942) 1 M.L.J. 57, 65 F.B.

⁷ 1942 Mad. 183; *Brij Narain v. Mangla Prasad*, 1924 P.C. 50; 46 All. 95.

Note 2.

¹ *Honniah v. Eriah*, 37 Mysore 395; 10 Mys. L.J. 129; *Perrazu v. Subbarayudu*, 1922 P.C. 71; *Benoy Krishna v. Amarendra*, 1940 Cal. 51; (1940) 1 Cal. 183.

members for the profits which have accrued and a suit will lie to compel him so to account.² See also Sec. 7, Note 13 below.

3. *Manager's power to contract debts for family business.*—Where a joint Hindu family owns or carries on a business, the power of the manager necessarily includes a power to alienate the family property for legitimate and proper purposes of the business. An alienation made for such a purpose is binding on the whole family including the interest of the minor coparceners therein.¹ He can raise money not only to discharge debts arising out of the family business but also the money needed to carry it on. As to the limit to which a lender or purchaser acting honestly and with due caution may be reasonably expected to pursue his inquiries as to the necessity, before advancing money for a family business, see the undermentioned cases.² See also Sec. 6, Notes 22, 23 and 24 above.

4. *General powers of manager of family business.*—Besides the power to contract debts for the family business the manager has the power to do all that is incidental to the business such as entering into contracts, granting receipts or discharging claims, etc., all in his own name.¹ The manager can himself bring a suit on a contract entered into with the joint family business. The other coparceners

Note 2.

² *Narain Rao v. Sooba Rao*, 5 Mys. L.R. 225.

Note 3.

¹ *Niamat Rai v. Din Dayal*, 1927 P.C. 121 : 8 Lah. 597 ; *Ramkrishna v. Ratanchand*, 1931 P.C. 136 : 53 All. 190 ; *Raj Kumar v. Mohan Lal*, 1931 All. 253 : 131 I.C. 872 ; *Veerappa v. Nurkhan Sait*, 30 Mysore 150 : 3 Mys. L.J. 54 ; *Ramanathan v. Muthuraman*, 1942 Mad. 161.

² 1927 P.C. 121 (Need not go into intricate business aspects) ; 1931 P.C. 136 (Not bound to see to application of the money) ; *Jagannath v. Shri Nath*, 1934 P.C. 85 : 56 All. 123 ; *Kesar Singh v. Santokh Singh*, 17 Lah. 824.

Note 4.

¹ *Kishen Pershad v. Har Narain Singh*, 33 All. 272 P.C. ; *Gurumurthy Bhatta v. Ramiah*, 28 Mysore 155.

need not join as plaintiffs.² But where it is necessary, in order to safeguard the interest of the defendants, to implead the other members of the family, the defendants may apply to bring them on record.³ A suit on such a contract can also be brought by all the coparceners jointly. A coparcener other than the manager can bring a suit on a contract entered into by him in his own name, but in other cases a single coparcener other than the manager cannot by himself sue or grant receipts or discharges binding on the family.⁴ The provisions of Order 30, Civil Procedure Code, are not applicable to the case of a joint family business.⁵

5. *Manager's power to give valid discharge for debts.*—The manager of a joint Hindu family can give a discharge of a debt due to the family so as to bind the other coparceners.¹ Where all the coparceners are minors, as soon as one of them attains majority, he becomes the rightful manager of the family and hence competent to grant a discharge without the concurrence of the other members.² If the manager fails to sue for a debt in time after he becomes a major, the other minor coparceners are also bound by his failure and cannot claim the benefit of Sec. 7, Lim. Act.³

A coparcener other than the manager has no power to give a discharge binding on the whole joint family or the other coparceners, though he has a joint interest in the

Note 4.

² *Jothi v. Thimme Gowda*, 8 Mys. L.R. 119; *Jawarmull v. Hazarimal*, 8 Mys. L.J. 441; *Gange Gowda v. Punamchand*, 42 Mysore 597 : 15 Mys. L.J. 547.

³ *Madhgowda v. Kalappa*, 1934 Bom. 178 : 58 Bom. 348.

⁴ 8 Mys. L.J. 441; 28 Mysore 155; 42 Mysore 597.

¹ 8 Mys. L.J. 441; 42 Mysore 597.

Note 5.

¹ *Subba Rao v. Subba Rao*, 28 Mysore 237 : 1 Mys. L.J. 34.

² *Javare Gowda v. Mari Gowda*, 28 Mysore 286 : 1 Mys. L.J. 72.

³ 28 Mysore 237; *Sunder Singh v. Bore Gowda*, 44 Mysore 445 : 17 Mys. L.J. 216.

debt due to the family.⁴ Nor can one coparcener as such grant a discharge of a debt due to another coparcener.⁵

6. *Manager's power to acknowledge debts.*—An acknowledgment of a debt or payment of interest on or part payment of a debt due from a joint family, by the manager before it is barred, operates to keep the debt alive against all the coparceners of the family and to extend the period of limitation.¹ This has now been expressly provided in Sec. 21 (3). (b) Limitation Act by an amendment in 1928. But the manager has no power to revive a debt due by the family by passing a fresh promissory note coming under Sec. 25 (3) Contract Act. He alone will be liable under such a note and not the whole family.²

A manager cannot keep a debt alive against the other coparceners by acknowledging or making payments after partition.³

Relinquishment of debt by manager.—A manager has no power to give up a debt due to the joint family.⁴

7. *Compromise by manager.*—A compromise entered into by a manager *bonafide* for the benefit of the family binds the other members of the family including the minors.¹ In a suit relating to joint family property where the father

Note 5.

⁴ *Gurumurthy Bhatta v. Ramiah*, 28 Mysore 155.

⁵ *Sivasankarappa v. Kori Siddabasappa*, 21 Mysore 131.

Note 6.

¹ *Nanjundappa v. Rachappa*, 3 Mysore 55; *Ugrappa v. Chikkabadegowda*, 6 Mysore 23. Contra—*Muthuvelu Chetty v. Pooviah*, 11 Mys. L.R. 454 [Not good law in view of Sec. 21 (3) (b) Lim. Act].

² *Dalip Singh v. Kundan Lal*, 35 All. 207; *Thakur Das v. Mst. Putti*, 1924 Lah. 611 : 5 Lah. 317; *Basalingappa v. Gurushantappa*, 16 Mys. L.R. 38.

³ *Pangudaya v. Uddandiya*, 1938 Mad. 774 : (1938) Mad. 968; but see *Mohana Reddy v. Gangaraju*, 1941 Mad. 772 : 197 I.C. 199 F.B.

⁴ *Dasaratharama v. Naralia*, 1928 Mad. 601 : 51 Mad. 484.

Note 7.

¹ *Pitam Singh v. Ujagar Singh*, 1 All. 651; *Bhagwan Singh v. Ujagar Singh*, 1937 Nag. 237 : (1938) Nag. 221; *Krishnagowda v. Ranganna*, 1 Mysore 1.

and his minor sons are parties and the father himself is the next friend or guardian *ad litem* of the minors, his powers are however controlled by O. 32 R. 7 Civil Procedure Code, and the minors are not bound by any compromise relating to the family property entered into by the father without the leave of the court.²

8. *Manager's powers regarding suits*.—Where the manager of a joint Hindu family has entered into a transaction in his own name on behalf of the family, he may sue or be sued alone in respect of the transaction.¹ Thus where a suit is brought against the manager to enforce a mortgage of family property executed by him on behalf of the joint family the other coparceners are not necessary to be brought on record in the suit. They are bound by the proceedings thereunder even though they are not impleaded.² However a member who contends that the action of the manager is beyond his powers is not properly represented by the manager and should be joined as a party if he wishes.³ The manager will be deemed to substantially represent the other members in the absence of fraud, collusion or negligence.⁴ Thus an order for removal of obstruction passed against a manager on an obstruction offered by him will be binding on the other coparceners also.⁵ However, a decree or order not passed against the manager in his

Note 7.

² *Ganesh Rao v. Tulja Ram Rao*, 36 Mad. 295 P.C.; *Venkata Rao v. Tulja Ram Rao*, 1922 P.C. 69 : 45 Mad. 298.

Note 8.

¹ *Krishna Prasad v. Har Narain Singh*, 33 All. 272 P.C.; *Sheo Sankar v. Jaddo Kunwar*, 36 All. 383, 386 P.C.; *Lingangouda v. Basangouda*, 1927 P.C. 56 : 51 Bom. 450; *Gurumurthy Bhatta v. Ramiah*, 28 Mysore 155.

² *Ramanna v. Narasimhiah*, 17 Mysore 7; *Kondappa v. Papanna*, 6 Mys. L.J. 317; 36 All. 383 P.C.; *Ramanathan v. S. Rm. M. Firm*, 1937 Mad. 345 : (1937) Mad. 376; *Venkatanarayana v. Somaraju*, 1937 Mad. 610 : (1937) Mad. 880 F.B.; *Bhagwan Singh v. Behari Lal*, 1937 Nag. 237 : (1938) Nag. 221.

³ *Motiram v. Lalchand*, 1937 Nag. 121 : (1937) Nag. 362.

⁴ *Keshavmurthy v. Krishnappa*, 23 Mysore 250 F.B.

⁵ *Sevaram v. Suryanarayana Setty*, 39 Mysore 875 : 12 Mys. L.J. 381.

representative capacity will not bind the other members of the family.⁶

As regards immovable property belonging to the family, the manager is entitled as such to bring a suit to establish a right in respect of such property without making the other members of the family parties to the suit.⁷ Thus the manager can himself sue to recover family property from a trespasser.⁸ But a coparcener who is not the manager cannot sue alone as representing the family for such a relief.⁹

Pronote in favour of family.—Where family funds are lent by the manager on a negotiable instrument and by a subsequent arrangement between the coparceners he becomes entitled only to a portion of the amount due under it, he can recover only his share.¹⁰ To such a suit the other sharers must be joined as parties.

Death of manager.—On the death of the manager pending a suit in which he is suing or is being sued as representing the family, it is enough to bring on record the coparcener who succeeds him as manager.¹¹ It is not necessary to bring the other coparceners on record to continue the proceedings.¹²

9. *Decree against manager and res judicata.*—A decree passed against the manager as representing the family in respect of a family debt or in respect of family properties operates as *res judicata* and is binding upon all the family members including minors even though they were not parties

Note 8.

⁶ *Ramachandriah v. Seetharamiah*, 1 Mys. L.R. 60.

⁷ *Arunachala v. Vaithilinga*, 6 Mad. 27 ; 1927 P.C. 56 : 51 Bom. 450.

⁸ *Jothi v. Thimma Gowda*, 8 Mys. L.R. 119 ; *Md. Sadik v. Khedan Lal*, 1916 Pat. 251 : 36 I.C. 197 [Suit to eject trespasser].

⁹ *Krishna Prasad v. Harnarain Singh*, 33 All. 272 P.C.; *Abdul Rahim Sab v. Erappa*, 19 Mys. L.J. 246.

¹⁰ *Gopalu Pillai v. Kothandaramier*, 1934 Mad. 529 : 57 Mad. 1082.

¹¹ *Narasimhaswamy v. Dayashankar*, 1938 All. 256 : (1938) All. 425.

¹² *Atmaram v. Bankumal*, 1930 Lah. 561 : 11 Lah. 598.

to the suit.¹ As observed by the Judicial Committee, 'In the case of a Hindu family where all have rights it is impossible to allow each member of the family to litigate the same point over and over again, and each infant to wait till he becomes of age and then bring an action or bring an action by his guardian before; and in each of these cases, therefore, the court looks to Explanation 6 of Sec. 11, Civil Procedure Code, to see whether or not the leading member of the family has been acting either on behalf of minors in their interest or if they are majors with the assent of the majors'.² Even an *ex parte* decree against the manager will be binding on the other coparceners, unless there is proof that he was negligent or acted against the interest of the family or was guilty of fraudulent conduct.³ It is otherwise if the decree is against the manager in his personal capacity⁴ or in respect of his private debts⁵ and no question of *res judicata* arises.

In order that a decree or order against the manager should operate as *res judicata* against coparceners who were not parties to the proceedings, it is not necessary that the plaint or written statement should state in distinct terms that he is suing or is being sued as the manager of the family. It is the substance and not the form that is essential in such cases.⁶

Note 9.

¹ *Daulat Ram v. Meherchand*, 15 Cal. 70 P.C.; *Sheo Shankar v. Jaddo Kunwar*, 36 All. 383 P.C.; *Lingangouda v. Basangouda*, 1927 P.C. 56; *Ramanna v. Narusimhiah*, 17 Mysore 7; *Kondappa v. Papanna*, 6 Mys. L.J. 317; *Sevaram v. Suryanarayan Setty*, 39 Mysore 875; 12 Mys. L.J. 381.

² 1927 P.C. 46; see also *Sundar Singh v. Boregowda*, 44 Mysore 445.

³ 6 Mys. L.J. 317; see also *Keshavmurthy v. Krishnappa*, 23 Mysore 250 F.B.

⁴ *Sathuvayyan v. Muthuswami*, 12 Mad. 325; *Mela Lal v. Gori*, 1922 Lah. 200; 3 Lah. 288; *Ramachandriah v. Seetharamiah*, 1 Mys. L.R. 60.

⁵ *Uddandasetty v. Nanje Gowda*, 36 Mysore 188; 9 Mys. L.J. 303.

⁶ *Kondappa v. Papanna*, 6 Mys. L.J. 317; 1927 P.C. 56 [Dismissal of suit by manager—*res judicata*]; *Surendranath v. Shambunath*, 1927 Cal. 870; 55 Cal. 210; *Mulgund Co-operative Society v. Shidlingappa*, 1941 Bom. 385; (1941) Bom. 682.

The same considerations apply also where the father is the manager of the joint family of himself and his sons, grandsons, etc.⁷

10. *Promissory note executed by manager.*—In Mysore, a promissory note executed by the manager of a joint Hindu family cannot be enforced against the other coparceners or their shares, even where the money is borrowed for family purposes.¹ The other members will be liable under the note only if their names appear on the instrument so that the responsibility is made plain and can be instantly recognised as the document passes from hand to hand.² This disability cannot be got over by suing the executant (manager) on the note and the other coparceners on the contract of loan, the loan and the execution of the pronote not giving rise to distinct causes of action.³ In British India it is held that the other coparceners may be sued on the note if the money borrowed by the manager on the promissory note is for a joint family business or to meet a necessity of the joint family. Their liability however is limited to their share in the joint family property, unless they can be treated as contracting parties.⁴

Note 9.

⁷ *Ganesh v. Narain*, 1931 Bom. 484 : 55 Bom. 709 ; *Venkatanarayana v. Somaraju*, 1937 Mad. 610 F.B.

Note 10.

¹ *Lunidharam Sait v. Gangappa*, 17 Mysore 175 ; *Basappiah v. Siddappa*, 27 Mysore 181 ; *Subba Rao v. Swami Rao*, 29 Mysore 146 : 2 Mys. L.J. 83 ; *Rama Setty v. Kapoor Chand*, 32 Mysore 175 : 5 Mys. L.J. 46 ; *Venkataramiah v. Anantaraman*, 14 Mys. L.J. 366 ; *Narasimhamurthy v. Singlachar*, 45 Mysore 242 : 18 Mys. L.J. 304, 311 ; Contra—*Ramaswamy Mdr. v. Kare Mangia Chetty*, 2 Mysore 49 [Not good law].

² *Dodbasappa v. Baliah*, 17 Mysore 17 ; *Venkatramanappa v. Channiah*, 17 Mysore 133 ; 27 Mysore 181 ; *Sadasuk v. Sri Krishna Prasad*, 46 Cal. 663 P.C.

³ *Gundappa v. Nanjunda Sastry*, 21 Mysore 317 F.B. ; 29 Mysore 146 ; Contra—*Ramanathan v. Muthuraman*, (1941) 2 M.L.J. 816 [The maker on the note, and the other coparceners on the debt].

⁴ *Krishna v. Krishnaswamy*, 23 Mad. 597 ; *Raghunath v. Sri Narain*, 1923 All. 424 : 45 All. 434 ; *Vital Rao v. Vithal Rao*, 1923 Bom. 244 : 72 I.C. 242 ; *Mutsaddi Lal v. Sakirchand*, 1935 Lah. 735 : 17 Lah. 311 ; *Srikant Lal v. Siddeswari Prasad*, 1937 Pat. 455 : 15 Pat. 441 ; *Maruda Muthu v. Kadir Basha*, 1938 Mad. 377 : (1938) Mad. 568 ; (1941) 2 M.L.J. 816.

Where the manager is the father and his sons are the other coparceners, after the death of the father the sons can be made liable under the pronote executed by the father even though the sons' names do not appear on the instrument and the coparcenary property in the hands of the sons including their own shares in it can be proceeded against, unless the sons show that the debt was tainted with illegality or immorality.⁵ Even in execution of a decree obtained against the father on the pronote, after the father's death the son's interest in the coparcenary properties can be proceeded against, because they are not ordinary coparceners but sons who are under a pious duty to discharge the debts due by their father.⁶ But where the pronote is for a private debt of the father and not for purposes binding on the family and the family thereafter becomes divided in status, the son's shares cannot be proceeded against even after the death of the father. If on the father's death the sons inherit his share they will of course take it burdened with the liability of paying that debt as his heirs.⁷

11. *Manager's power of alienation of coparcenary property.*—The power of the manager of a joint Hindu family to alienate coparcenary property is analogous to that of a manager for an infant heir. His power is a limited and qualified power. As observed by the Privy Council, it can only be exercised rightly in a case of need or for the benefit of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it in the particular instance is the thing to be regarded.¹ The

Note 10.

⁵ *Subbegoowa v. Kothandaram Setty*, 11 Mysore 84 ; *Rama Setty v. Kapoor Chand*, 32 Mysore 175 ; see also *Narasinga Setty v. Viswanathiya*, 43 Mysore 661 : 17 Mys. L.J. 47.

⁶ *Narayanawamy v. Gangadharappa*, 7 Mysore 56 ; *Chikka Naika v. Ranganna*, 21 Mysore 212 ; *Thippanna v. Rudramma*, 16 Mys. L.J. 47 [Position of sons and other coparceners explained].

⁷ *Talkad Rama Rao v. Thamanna*, 44 Mysore 357 : 17 Mys. L.J. 347.

Note 11.

¹ *Hanuman Persaud v. Mst. Babooee*, 6 M.I.A. 393 ; *Maruliah v. Chikka-veeranna*, 2 Mysore 76 ; *Budhakaran v. Thakur Prasad*, 1942 Cal. 311 : (1942) 1 Cal. 19 ; *Mit.*, Chap. I, Sec. 1, verses 27, 28 and 29.

expression 'in case of need' in the judgment in Hanuman Persaud's case can be traced to the words 'during a season of distress' in verse 28 and the expression 'for the benefit of the estate' to the words 'for the sake of the family' in the said verse.² An alienation within these limits will bind the interest of the adult and minor coparceners in the property. It is not necessary in such a case that the express consent of the adult coparceners should have been obtained.³

The principles enunciated in Hanuman Persaud's case which related to an alienation by a mother as manager of the estate of her minor son, apply equally to the case of alienations of coparcenary property by the manager of a joint Hindu family as well as to alienations by a Hindu widow or other limited heir of property inherited by them from males.⁴ Hence see Notes under Sec. 18, Notes 5 and 6 below, as to alienations for the benefit of the estate and for legal necessity.

An alienation of coparcenary property by the manager for no legal necessity or benefit is not void but voidable at the option of the other coparceners.⁵ Nor is it in the nature of a breach of trust.⁶ The other coparceners may affirm it or repudiate it.⁷ But a creditor cannot repudiate it unless it is in fraud of creditors.⁸

12. *Burden of proof of necessity or benefit.*—Their Lordships of the Privy Council observe that there is no

Note 11.

² *Benares Bank v. Hari Narain*, 1932 P.C. 182 : 59 I.A. 300, 305, 308.

³ *Sahu Ram v. Bhup Singh*, 39 All. 437, 443 : 39 I.C. 280 P.C. ; *Karamchand v. Ram Labhaya*, 1926 Lah. 468 : 7 Lah. 426 ; see also *Siddappa v. Lingappa*, 16 Mys. L.J. 32, 39.

⁴ 39 All. 437 P.C. ; *Kameswar v. Run Bahadur*, 6 Cal. 843 P.C.

⁵ *Nagappa v. Chowdappa*, 29 Mysore 153 : 2 Mys. L.J. 284 ; *Doddanna v. Nanja*, 32 Mysore 247 : 5 Mys. L.J. 118 ; *Nagiah v. Muniah*, 38 Mysore 379 : 11 Mys. L.J. 422.

⁶ *Brij Narain v. Mangla Prasad*, 1924 P.C. 50 : 46 All. 95 ; *Lingayya v. Punayya*, 1942 Mad. 183 F.B.

⁷ *Jogeswar v. Deva Dut*, 1924 All. 51 : 45 All. 654.

⁸ *Imperial Bank of India v. Mst. Maya Devi*, 1935 Lah. 867 : 16 Lah. 714.

difference between the burden of proof when it is desired to support an alienation made by a manager of a joint estate and that which is required to support an alienation made for example by a widow who has only a similar limited power of disposal.¹ Hence see notes under Sec. 18, Notes 8 and 9 below. See also the undermentioned cases.²

13. *Subsequent alienee and burden of proof*.—The reasonable inquiries necessary on the part of a lender advancing on the security of joint family properties depends upon the circumstances of each case. Where a lender advances money to the manager of a joint Hindu family and the money is used to pay off previous mortgages, the lender though one step removed from the debts under the original mortgages cannot be let off more lightly in the matter of showing necessity or benefit for the money so advanced, so as to make the loan binding on the shares of the other members of the family. The burden is on the lender to show that those previous debts so paid off were binding on the members of the family before he can make his own advances binding upon those members.¹ The

Note 12.

¹ *Anant Ram v. Collector of Etah*, 44 I.C. 290 : 40 All. 171, 175 P.C.

² *Chikkarudrappa v. Rangiah*, 11 Mys. L.R. 270 [Alienee to prove inquiry into necessity or benefit]; *Kala v. Javare Gowda*, 15 Mysore 233 F.B. [Burden on alienee]; *Venkatramiah v. Ananthraman*, 14 Mys. L.J. 366 [do.]; *Sambayya Setty v. Rudrappa*, 42 Mysore 163 : 14 Mys. L.J. 491 [Alienation for family business]; *Paruva Setty v. Mallegowda*, 42 Mysore 176 : 15 Mys. L.J. 194; *Rudrappa Setty v. Rangoojee Rao*, 45 Mysore 83 : 18 Mys. L.J. 133, 138; *Mari v. Basappa*, 10 Mys. L.R. 68 [Alienee need not prove application of money to meet the necessity]; *Siddarangiah v. Gangiah*, 16 Mysore 54 [Alienation by manager—No presumption of necessity or benefit]; *Lakshminaraniya v. Narayana*, 18 Mys. L.R. 321 [do.]; *Sampangiramiah v. Subba Rao*, 42 Mysore 564 : 15 Mys. L.J. 529, 537 [Reasonable inquiry necessary varies from case to case]; *Ramanathan v. Viswanathan*, 1941 P.C. 43 : 193 I.C. 657 [Debt by manager of trading family—Burden on lender].

Note 13.

¹ *Urugjeje Gowda v. The City Co-operative Bank*, 15 Mys. L.J. 230; *Sampangiramiah v. Subba Rao*, 42 Mysore 564 : 15 Mys. L.J. 529; see also *Kishore Lal v. Bhawani Shankar*, 1940 P.C. 145; *Ramanathan v. Viswanathan*, 1941 P.C. 43 : 193 I.C. 657.

subsequent lender cannot be absolved from his making any inquiry into the validity of the prior alienation so far as it affects the other members of the family and he cannot be heard to say that the previous transaction *ipso facto* validates the second transaction and binds the shares of the other members.²

14. *Alienation by all major coparceners and presumption of legal necessity.*—There is no presumption that an alienation of coparcenary property by a manager is for necessity or benefit of the family.¹ This has to be proved like any other fact and the burden of proving it lies on the creditor or alienee. The fact that the manager happens to be the only adult coparcener at the time of the transaction does not make any difference in principle.² The mere fact that the alienation is made by the father who happens to be the only major coparcener at the time does not by itself afford *prima facie* proof that the alienation is for the sake of the family. No presumption in favour of the alienee that the alienation is for the sake of the family and binding on the interests of the sons arises or can be raised in such a case.³

But where all the adult coparceners join in incurring a debt or making an alienation the court may properly raise a presumption that the transaction is for purposes binding on the family including the junior coparceners.⁴ Even in such a case the court will require some other evidence to

Note 13.

² *Sampangiramiah v. Subba Rao*, 42 Mysore 564.

Note 14.

¹ *Siddarangiah v. Gangiah*, 16 Mysore 54.

² *Paruva Setty v. Mallegowda*, 42 Mysore 176 : 15 Mys. L.J. 193.

³ *Krishnappa v. Puttamadia*, 7 Mysore 15; *Kala v. Javare Gowda*, 15 Mysore 233 F.B.; *Rudramma v. Chikkarangiah*, 27 Mysore 155; *Muddachari v. Kenchayya*, 29 Mysore 131 : 2 Mys. L.J. 70; *Seetharamusa v. Bidare Thimmappa*, 37 Mysore 457 : 10 Mys. L.J. 448; 42 Mysore 176.

⁴ *Chikka v. Ramaswamy*, 21 Mysore 145; *Annappa Setty v. Gavirangappa* 28 Mysore 10; *Srinivasan v. Puttegowda*, 45 Mysore 228 : 18 Mys. L.J. 276, 281.

show that the transaction is a proper one and binding on the junior members of the family, though perhaps comparatively little other evidence would be necessary to satisfy the court.⁵ Thus in *Srinivasan v. Puttegowda*,⁶ where all the major coparceners (father and son) joined in mortgaging the family properties and borrowed Rs. 8,000 to discharge prior debts and the mortgagee did not satisfy the court that he made reasonable inquiries, it was held that because there was no other evidence in respect of Rs. 3,386 apart from any presumption that might be set up in favour of the creditor, the interest of the junior coparcener (grand-son) was not liable to that extent.

In *Paruva Setty v. Mallegowda*⁷ it was observed by Srinivasa Rao, J., that the circumstance that all the adult coparceners join in a transaction itself affords *prima facie* evidence of benefit or necessity. But later decisions have shown a clear tendency to require some evidence other than the mere fact that all the adult coparceners have joined in the transaction. Thus in *Gurumurthiah v. Seetharamiya*,⁸ where both the father and his eldest son who was the only other major coparcener executed a mortgage of family properties and the mortgagee did not prove that it was for necessity or benefit of the family or that he made any efficient inquiries, it was held that the mortgage was not binding on the interests of the other coparceners. In *Kishore Lal v. Bhawani Shankar*,⁹ all the major coparceners executed a mortgage on behalf of themselves and their minor sons for the purpose of paying the antecedent debts incurred

Note 14.

⁵ 45 Mysore 228 ; *Gurumurthiah v. Seetharamiya*, 19 Mys. L.J. 310 : 46 Mysore 547.

⁶ 45 Mysore 228 : 18 Mys. L.J. 276 ; see also *Kishore Lal v. Bhawani Shankar*, 1940 P.C. 145 : 189 I.C. 433 [No presumption raised in favour of the lender].

⁷ 42 Mysore 176 : 15 Mys. L.J. 193.

⁸ 19 Mys. L.J. 310, 314, 320 ; see also 18 Mys. L.J. 276.

⁹ 1940 P.C. 145 ; see also *Nanjunda v. Venkatappa*, 1942 Mad. 758.

by them jointly, for carrying on a business and for household purposes for the benefit of the family. In the suit to enforce the mortgage, it was contended for the mortgagee that those recitals of justification and necessity in the mortgage deed threw the burden upon the defendants (mortgagors and the minor coparceners), of disputing that all the executants were liable for all the antecedent debts. Sir George Rankin observed on behalf of the board : 'As against the minor members of the family into whose mouth this recital was put by the draftsman of the mortgage deed, their Lordships can attach no such high value. The burden remains heavily upon the mortgagee to establish compliance with the conditions under which the Hindu Law permits the interests of the minor members to be taken from them.'

15. *Consideration in part applied for purposes of necessity*.—In cases where joint family property is sold by the manager for legal necessity but the whole of the consideration is not proved to have been applied to purposes of necessity and the alienation is challenged on that ground by the other members of the family, if the alienation itself is justified by legal necessity and the alienee acts in good faith and after due inquiry as to the necessity for the alienation, the mere fact that part of the consideration is not proved to have been applied to purposes of necessity would not invalidate the alienation, the alienee not being bound to see to the application of the money. In such cases the alienation must be upheld unconditionally whether the part not proved to have been applied to purposes of necessity is considerable or small.¹ In this respect the principles that apply to the case of an alienation by the manager of a joint Hindu family and those that apply to such an alienation by a female limited owner are the same.² Hence see also Sec. 18, Note 21 below under the same heading.

Note 15.

¹ *Krishnadas v. Nathuram*, 1927 P.C. 37 : 49 All. 149 ; *Mari v. Basappa*, 10 Mys. L.R. 68.

² *Suraj Bhan Singh v. Sah Chain Sukh*, 1927 P.C. 244.

16. *Who may alienate coparcenary property.*—The following persons alone have power to alienate coparcenary property (not merely their individual interest) so as to pass a good title to the alienee :—

(1) The whole body of coparceners where they are all adults.

(2) The Manager, to the extent mentioned in Note 11 above.

(3) The Father, to the extent mentioned in Note 17 below.

(4) The Sole-surviving coparcener, in the circumstances mentioned in Note 18 below.

No other coparcener has the power to alienate coparcenary property so as to bind the other coparcener's interests, unless authorised by them to do so.¹

17. *Alienation of coparcenary property by father.*—Where the joint family consists of a father and his lineal descendants, the father is necessarily also the manager of the family. As manager he has the power to alienate coparcenary property in the circumstances specified in Note 11 above. In addition, as father, he has in British India the special power of alienating the coparcenary property including the interests of his sons, grandsons and great-grandsons therein for the payment of his own private debts, provided the debt was an antecedent debt and was not incurred for illegal or immoral purposes.¹ In Mysore the father has no such special power. In Mysore the sons are not under pious obligation to discharge the father's private debts during his lifetime and hence the father also has no power to alienate

Note 16.

¹ *Rudrappa v. Joorja*, 6 Mys. L.R. 28 ; *Mallegowda v. Nanjiah*, 8 Mys. L.R. 34 ; *Veerabhadrapa v. Chickka Muniappa*, 8 Mysore 7 ; *Thopa v. Lakkappa*, 11 Mysore 18 ; *Krishna v. Krishnaswamy*, 23 Mad. 597 ; *Putto Lal v. Raghubir Prasad*, 1933 Oudh 535 : 9 Luck. 237.

Note 17.

¹ *Brij Narain v. Mangla Prasad*, 1924 P.C. 50 : 46 All. 95 ; *Masit Ullah v. Damodar*, 1926 P.C. 105 : 48 All. 518 ; *Sat Narain v. Sri Krishna Das*, 1936 P.C. 277 : 164 I.C. 6.

the interests of the sons therein for payment of his private debts.²

The father may also make a gift of a reasonable portion of the joint family property movable or immovable to his daughter if it is in discharge of any moral obligation.³ It is not unusual in Mysore for a father or brother to make a gift of a small portion of family immovable property in favour of a daughter of the family at or even after her marriage.⁴ But he cannot make a gift of a considerable portion of ancestral immovable property.⁵ The alienation by way of gift must be by an act *inter vivos* and not by will.⁶

18. *Alienation by sole-surviving coparcener*.—A person who for the time being is the sole-surviving coparcener is entitled to dispose of the coparcenary property in his hands as if it were his separate property. According to Sec. 8 (1) *d*, Hindu Law Women's Rights Act 1933, where joint family property passes to a single coparcener by survivorship, it shall so pass subject to the rights to shares of the classes of females enumerated in Sec. 8 (1). Hence after that Act came into force the sole-surviving coparcener can only dispose of the property subject to the rights mentioned in Sec. 8. See also Sec. 6, Note 20, above.

19. *Alienation by junior coparceners*.—‘Even a single individual may conclude a donation, mortgage or sale of immovable property during a season of distress, for the sake

Note 17.

² *Kala v. Javare Gowda*, 15 Mysore 233 F.B.; *Puttaswamachar v. Ramachandrappa*, 17 Mysore 1 F.B.; *Nanjiah v. Chandregowda*, 41 Mysore 382 : 14 Mysore L.J. 510; *Thippanna v. Rudranna*, 16 Mysore L.J. 47; *Rudrappa Setty v. Rangoojee Rao*, 45 Mysore 83 : 18 Mysore L.J. 133.

³ *Channa v. Kempamma*, 42 Mysore 363 : 14 Mys. L.J. 456; *Bachoo v. Mankorebai*, 31 Bom. 373 P.C.; *Ramalinga v. Narayana*, 1922 P.C. 201 : 45 Mad. 489.

⁴ 42 Mysore 363 : 14 Mys. L.J. 456.

⁵ *Mallamma v. Boriah*, 21 Mysore 46; *Gudiyappa v. Venkatramanappa*, 28 Mysore 15.

⁶ *Gangi Reddy v. Thammi Reddy*, 1927 P.C. 80 : 50 Mad. 421, 425.

of the family and especially for pious purposes'.¹ Ordinarily it is the seniormost coparcener who is the manager of the family that has the authority to deal with the coparcenary property. A junior coparcener has no authority to deal with it so as to bind the interest of the other coparceners, unless the senior member is incapable of managing the affairs of the family either by reason of unsoundness of mind or because he is in a remote country or his whereabouts are unknown and his return not anticipated within a reasonable time.² But a temporary absence of the manager from the village for a short time is not sufficient to clothe the junior coparcener with the powers of a manager to deal with the coparcenary property particularly when there is no pressure for payment of debts due from the family.³

A junior coparcener may however deal with the coparcenary property with the express or implied consent of the other coparceners. Where junior coparceners purporting to act as managers sold some family properties at a time when the adult coparceners were absent, it was held that the question in such cases is not whether the sale was for the benefit of the adult coparceners or for family necessity but whether there was express or implied consent of those coparceners for the sale.⁴ The consent may also be expressed after the transaction. But where the adult coparcener after the sale agreed for the transfer of patta to the purchaser's name in mutation proceedings, it was held insufficient to convey his rights in the property sold or to create an estoppel against him.⁵

Note 19.

¹ *Mitakshara*, Chap. I, Sec. 1, verses 28, 29.

² *Veerabhadrapa v. Chikkamuniappa*, 8 Mysore 7 ; *Siddappa v. Lingappa*, 16 Mys. L.J. 32.

³ 16 Mys. L.J. 32 ; *Subbaraya v. Mallasetty*, 24 Mysore 376.

⁴ *Ibid.*

⁵ 16 Mys. L.J. 32 ; *Mathura Mohan v. Ram Kumar*, 43 Cal. 790 ; *Imudipattam v. Peria Doreswamy*, 24 Mad. 377 P.C. [where statute requires a deed, mere admission is not enough to convey title to land].

20. *Alienation of undivided coparcenary interest.*—According to the strict theory of the Mitakshara Law, each coparcener has a proprietary interest in the whole of the coparcenary property. No coparcener therefore can alienate his interest in the property without the consent of the other coparceners. This rule has been strictly applied in the United Provinces, and in Bengal to cases governed by the Mitakshara Law. But the rigour of this rule is relaxed in favour of alienees for value in the Bombay and Madras Presidencies and in favour of purchasers at an execution sale throughout British India.¹

In Mysore it has long been recognised that a coparcener can alienate his undivided interest in the coparcenary property for value without the concurrence of the other coparceners.² He cannot however dispose of it by gift or will.³ But where the father makes a gift of a portion of family property with the concurrence of his sons, the son of one of those sons cannot question the gift.⁴

Though a coparcener can alienate his undivided interest in the entire joint family property or in any specific property, he has no right to alienate as his undivided interest any specific property because before partition he cannot claim any particular property entirely as his own.⁵

Note 20.

¹ *Mulla's Hindu Law*, 9th edn., p. 294; *Lakshman v. Ramchandra*, 5 Bom. 48, 61 P.C.; *Pandurang v. Bhagwan Das*, 1920 Bom. 341; 44 Bom. 341; *Nanjundaswamy v. Kanugaraju*, 42 Mad. 154; 49 I.C. 666; *Syed Kasam v. Jorawar Singh*, 1922 P.C. 353; 50 Cal. 84 [Central Provinces case]; *Madho Prasad v. Mehrban Singh*, 18 Cal. 157 P.C. [Bengal view]; *Narain Prasad v. Sarnam Singh*, 39 All. 500 P.C. [Allahabad view]; *Balgovind Das v. Narain Lal*, 15 All. 339, 351 P.C.

² *Lingappa v. Channahasappa*, 22 Mysore 293; *Mariappa v. Thimmiah*, 12 Mysore 18; *Thimmia v. Bada Thimma*, 19 Mysore 67; see also *Poovia v. Kutama*, 17 Mys. L.R. 127; *Rangappa v. Narasimha Sastry*, 3 Mysore 44 [Alienee of undivided share in mortgaged property cannot redeem that share only].

³ *Mallamma v. Boriah*, 21 Mysore 46; *Rottala v. Pulicat*, 27 Mad. 162, 166.

⁴ *Nanjundiah v. Sankarappa*, 11 Mys. L.R. 157.

⁵ 19 Mysore 67; *Aiyagari v. Aiyagari*, 25 Mad. 690 F.B.; *Hari v. Hakamchand*, 10 Bom. 363.

21. *Position of coparcener who has alienated his undivided interest.*—The mere alienation of the undivided interest of a coparcener either by private treaty or in execution of a decree does not affect the status of such coparcener or of the joint family so long as there is no partition regularly brought about.¹ Nor does it take away the alienating coparcener's right of survivorship to the other coparceners on their death.² Thus where a joint family consists of A, B and C, and A sells his undivided interest to P and thereafter B dies, P is entitled on a partition thereafter not to one-half but to one-third only, that being A's share at the date of the sale. On B's death his interest passes by survivorship to A and C.

Even an alienee's suit for partition is not a suit for partition such as can be brought by one of the coparceners wishing to be divided from the others. Such a suit for partition by an alienee of an undivided interest does not affect the status of the family. It does not for instance make his alienor a divided member.³ As observed by Miller, C.J.: 'His suit is a method of giving effect to his transfer and might conceivably be framed as a suit to compel his alienor to effect a partition of his share and deliver to him, the alienee, so much of the resulting separate property as has been alienated. The more convenient method when specific property has been alienated and perhaps the only possible course if the alienor is dead when the alienee seeks to reduce his purchase into possession, is to sue the family for the delimitation of the alienor's share so that if possible the specific property may be allotted to that share'.⁴

Note 21.

¹ *Lingappa v. Nanjappa*, 5 Mysore 86 ; *Rama Subbaraya v. Narasimharaju*, 1940 Mad. 217 : 188 I.C. 700.

² *Gurulingappa v. Nandayya*, 21 Bom. 797, 803.

³ *Lingappa v. Channabasappa*, 22 Mysore 293.

⁴ 22 Mysore 293, 300, 301 ; see also *Aiyagari v. Aiyagari*, 25 Mad. 690 F.B.

22. *Rights of purchaser of coparcener's interest:* (1) *Right to sue for partition.*—The purchaser of a coparcener's undivided share in specific property can bring a suit for partition of that property alone¹ though his vendor himself could not sue for such a partial partition. The prohibition against seeking a partial partition is not enforced against the alienee of undivided share in specific property as he is neither interested nor quite in a favourable position to discover all the other family properties.² Further the coparceners may not be willing to become divided in status either. The view of the British Indian courts is not uniform in this respect.³ The alienee may sue for partition in the lifetime of his alienor or even after his death.⁴

(2) *Share to which alienee is entitled on partition.*—The alienee is entitled on partition to the share to which the alienor was entitled at the date of the alienation and not at the date when he seeks to reduce his interest to possession.⁵ No later addition to the coparcenary can reduce that share.⁶ Whether the alienee should get the alienor's fractional share in the properties existing as on the date of the alienation or of the alienee's suit for partition is not free from all doubt. In Madras it is held that the properties should be taken as existing on the date of the suit for partition.⁷

Note 22.

¹ *Rangappa v. Narasimha Sastry*, 3 Mysore 44; *L. Mylarappa v. Siddoji Rao*, 9 Mysore 43 [Purchaser at a court sale].

² 9 Mysore 43.

³ *Manjappa v. Shanmuga*, 38 Mad. 684 [Must sue for general partition]; *Isharappa v. Krishna*, 1922 Bom. 413; 46 Bom. 925 [do.]; *Rammohan v. Mulchand*, 28 All. 39 [Need not sue for general partition]; *Tarini Charn v. Debendrala*, 62 Cal. 655 [do.].

⁴ *Aiyagari v. Aiyagari*, 25 Mad. 690 F.B.; *Lingappa v. Channabasappa*, 22 Mysore 293, 301.

⁵ *Chinnu Pillai v. Kalimuthu*, 35 Mad. 47 F.B.; *Narogopal v. Paragowda*, 41 Bom. 347; 39 I.C. 23; *Vankatapathiah v. Ramanna Setty*, 19 Mys. L.J. 290, 295 [mortgage]; *Gurumurthiah v. Seetharamiah*, 19 Mys. L.J. 310, 319; 46 Mysore 547 [mortgage].

⁶ 19 Mys. L.J. 310, 319; *Rangaswamy v. Krishnayyan*, 14 Mad. 408 F.B.

⁷ *Muthukumara v. Sivanarayana*, 1923 Mad. 158; 56 Mad. 534.

(3) *Right to possession*.—The alienee of a specific part of the family properties from a coparcener cannot sue to be put in possession of such specific part, as until a partition is effected even the alienor has no right to exclusive possession of or title to any specific property.⁸ His position is in some respects worse than an ordinary tenant-in-common.⁹ He cannot, for instance, claim joint possession or enjoyment of his vendor's share irrespective of the wishes of the other coparceners.¹⁰ The only method of enforcing his rights under the alienation is to file a suit for partition in which what he has purchased could be determined and reduced to possession.¹¹ Where the undivided share is purchased in court auction he cannot get that share determined and reduced to possession in the execution proceedings.¹²

The proposition that in a joint family the possession of one coparcener is possession of all the coparceners does not apply as between a purchaser from one coparcener and the other non-alienating coparceners.¹³

(4) *Right to mesne-profits*.—The complete rights of the alienee can be decided only in a suit for partition where the equities between the parties and the rights including the rights to mesne-profits have to be worked out. The alienee not being entitled to claim to be placed in joint possession with the non-alienating coparceners, he is not entitled also to mesne-profits between the date of his purchase and the date of his suit for partition.¹⁴

Note 22.

⁸ *Thimmia v. Bada Thimma*, 19 Mysore 67.

⁹ *Lingappa v. Channabasappa*, 22 Mysore 293.

¹⁰ *Krishnaswamy Iyengar v. Venkatamma*, 14 Mys. L.J. 16 ; *Maharaja of Bobbili v. Venkataramanujulu*, 39 Mad. 265.

¹¹ 19 Mysore 67 ; 14 Mys. L.J. 16 ; *Ramachandra Rao v. Chagannal* 17 Mys. L.J. 270.

¹² 17 Mys. L.J. 270 [Prayer to convert execution application into a suit for partition was refused in this case].

¹³ *Dyavanna v. Chikkanna*, 10 Mysore 52.

¹⁴ 39 Mad. 265 ; *Triambak v. Pandurang*, 44 Bom. 621 ; *Sivaramamurthy v. Venkayya*, 1934 Mad. 364 : 57 Mad. 667 ; 14 Mys. L.J. 16.

23. *Insolvency of coparcener.*—On the insolvency of a coparcener his separate property and undivided interest in coparcenary property vest in the Official Receiver for the benefit of his creditors.¹ The purchaser of the insolvent coparcener's undivided interest from the Official Receiver will be like any other private purchaser of such undivided interest.²

Manager.—If the insolvent coparcener is the manager (not being the father of the other coparceners) of the family, then, besides his separate property and undivided coparcenary interest, it has been held in many cases that there vests in the Official Assignee or Receiver his (manager's) power to alienate the entire coparcenary property for debts payable out of the joint estate.³ The point is however not free from doubt. According to Sec. 2 (e) of the Presidency Towns Insolvency Act and Sec. 2 (1) (d) Provincial Insolvency Act 'property' is defined as including 'any property over which or the profits of which any person has a disposing power which he may exercise *for his own benefit*'. The words 'for his own benefit' have been taken from the corresponding English Bankruptcy statutes. It has been held in England that a power that can be exercised for the joint benefit of the bankrupt and another is not a power that can be exercised for his own benefit.⁴ That expression is confined to power capable of being exercised for the benefit of the bankrupt alone. The manager's power in a joint Hindu family is exercised not for his own benefit, but for the benefit of himself and all the other coparceners. It is

Note 23.

¹ *Nunna v. Chidaraboyina*, 26 Mad. 214, 221 ; *Lakshmanan Chettiar v. Srinivasa Iyengar*, 1937 Mad. 131 : (1937) Mad. 203.

² *Venkatrayudu v. Sivaramakrishniah*, 1934 Mad. 676 : 58 Mad. 126.

³ *Rangayya v. Thanikachella*, 19 Mad. 74 ; *Official Receiver v. Ramachandrappa*, 1929 Mad. 166 : 52 Mad. 246 ; *Khemchand v. Narain Das*, 1926 Lah. 41 ; *Bhola Prasad v. Ram Kumar*, 1932 Pat. 231 : 139 I.C. 31.

⁴ In *re. Mathieson* (1927) 1 ch. 283 ; In *re. Taylor's Settlement Trusts*, (1929) 1, ch. 435.

therefore submitted that the manager's power to alienate the entire joint family property for debts incurred on behalf of the family does not vest in the Official Assignee or Receiver on the insolvency of the manager.⁵ The same definition of the word 'Property' has been adopted in Sec. 2 (d) Mysore Insolvency Act XI of 1925 and the question has not come up for decision before the Mysore High Court.

The joint family as such cannot be adjudicated insolvent for the manager's act of insolvency.⁶

Father.—On the insolvency of the father of a joint Hindu family his separate property and undivided coparcenary interest vest in the Official Assignee or Receiver. It has been held by the Privy Council on a construction of the abovementioned definition of 'Property', that in addition, there vests in the Official Assignee or Receiver, the father's power to sell the son's interest in the coparcenary property for the father's personal debts which are not illegal or immoral.⁷ Their Lordships have held that when at the commencement of his insolvency a father has the power to enforce by sale of the whole joint family estate the pious obligation of his sons to discharge out of their interest his then existing untainted antecedent debts, the capacity to exercise that power *for the benefit of the insolvent* vests in the Official Assignee after adjudication, whatever may be the technical effect of the adjudication upon the coparcenary in other respects. The position in Mysore is different. Here a father has no disposing power over

Note 23.

⁵ See also Bhasyam Iyengar, J., in 26 Mad. 214; Curgenvon, J., in 1929 Mad. 246; Maclead, C.J., in *Sripad v. Basappa*, 1925 Bom. 416 : 49 Bom. 785; *Ramasastrulu v. Balakrishna Rao*, (1942) 2 M.L.J. 457 F.B.

⁶ *Mahabir Prasad v. Ram Tahal*, 1937 Pat. 665 : 172 I.C. 737.

⁷ *Sat Narain v. Behari Lal*, 1925 P.C. 18 : 84 I.C. 883 [Secs. 17 and 52 (2) (b) Pres. Towns Ins. Act also considered]; *Sat Narain v. Sri Krishna Das*, 1936 P.C. 277 : 164 I.C. 6 [under Pres. Towns Ins. Act] approving *Bawan Das v. Chicne*, 44 All. 316 and *Sita Ram v. Beni Prasad*, 47 All. 263 both under Prov. Ins. Act.

the son's interest which he can exercise for his own benefit, because in Mysore the son's pious obligation does not exist during the father's lifetime.⁸ See Note 17 above. Hence in Mysore there is no such power which can vest in the Official Receiver on the father's insolvency. Whether such a disposing power accrues to the Official Receiver on the insolvent father dying before his discharge is yet to be decided. See Sec. 28 (4) Mysore Insolvency Act 1925.

24. *Who may dispute alienations.*—A son born into a joint Hindu family has an interest in the family properties not only from the date of his birth but even while he is in his mother's womb. Hence an alienation by a coparcener in excess of his powers can be challenged by any other coparcener who was in existence or was conceived at the time of the alienation.¹ Where a coparcener who was in his mother's womb at the date of the alienation challenges it, it will not do for the alienee to plead that he was not aware of possible birth of a son.²

The logical result of the view in Mysore that a son's liability does not exist during the father's lifetime is that during the lifetime of his father a son can challenge his father's personal debt as not binding on him (son) or on his interest in the family property whether the debt be one contracted before or after his birth.³ The payment of the father's personal debts is not a family necessity and hence the sons can question the validity of an alienation by the

Note 23.

⁸ *Kala v. Javare Gowda*, 15 Mysore 233 F.B.; *Nanjiah v. Chandre Gowda*, 41 Mysore 382 : 14 Mys. L.J. 510 ; *Rudrappa Setty v. Rangoojee Rao*, 18 Mys. L.J. 133.

Note 24.

¹ *Sahapathi v. Somasundaram*, 16 Mad. 76 ; *Deo Narain v. Ganga Singh*, 37 All. 162 ; *Ponnambala v. Sundarappayyar*, 20 Mad. 354 ; *Venkatapathiah v. Ramanna Setty*, 19 Mys. L.J. 290, 292.

² *Brij Jiwandas v. Kawal Main Bibi*, 1942 All. 444 : 1942 A.L.¹. 616.

³ *Kala v. Javare Gowda*, 15 Mysore 233 F.B. ; *Thippanna v. Rudranna*, 16 Mys. L.J. 47.

father made to discharge his personal debts, though they were not born when the debts were contracted by the father.⁴

25. *After-born son's right to impeach alienations.*—Ordinarily a coparcener who is neither conceived nor born at the time of an alienation cannot question it.¹ He cannot question a decree made before his birth upon a mortgage executed by his father.² He cannot also question an alienation made by one who was the sole coparcener at the time of the alienation. Nor can an after-born coparcener question an alienation of joint family property which is binding upon the whole of the joint family as existing at its date, because the alienation would become effective against the whole family before he arrived.³ Thus where family properties were alienated by a person for a joint family purpose at a time when he had only three sons, it was held that two other sons who were born thereafter were not entitled to question its validity.⁴

An alienation of joint family property by the manager or the father will in any event be binding on his individual share as on the date of the alienation. No later addition to the coparcenary can affect that or question the same. But if the alienee wishes to enforce the alienation against any interest of the coparceners beyond the manager's or the father's individual share, the alienee must make out his case of necessity or benefit or reasonable inquiry as against every coparcener existing at or born after the date of the alienation against whom he wishes to enforce it. In other words, a coparcener who comes into existence after an alienation

Note 24.

⁴ 16 Mys. L.J. 47 ; 19 Mys. L.J. 290, 293, 294.

Note 25.

¹ *Lingappa v. Siddalingappa*, 13 Mysore 137.

² *Anka v. Siadegowda*, 22 Mysore 53.

³ *Krishnappa v. Puttamadia*, 7 Mysore 15 ; *Seetharamusa v. Bidare Thimmappa*, 37 Mysore 457 ; 10 Mys. L.J. 448 ; *Gurumurthiah v. Seetharamiah*, 19 Mys. L.J. 310, 318 ; 46 Mysore 547.

⁴ 7 Mysore 15.

but before the alienee seeks to enforce it can resist the alienee's claim or himself challenge the effectiveness of the alienation against anything except the manager's or the father's individual share.⁵ [See Illn. 1 below.] But if the coparceners not taking part in the alienation at its date adopt or ratify it before another coparcener, say A, comes into existence, the alienation will become complete against the whole of the joint family before A comes into existence, A cannot in such circumstances have a right to question the alienation.⁶ But no ratification by the other coparceners after the birth of A can take away A's right to impeach the alienation.⁷ In *Gurumurthiah v. Seetharamiah*⁸ two of the sons disputed an alienation (mortgage) made by their father and elder brother as not binding on thier shares. The mortgage impugned was to pay off prior mortgages executed by the father some of which came into existence before they were born and found to be for no proper family necessity or benefit. It was contended by the mortgagee that the two sons could not dispute mortgages which came into existence before they were born, and that therefore to the extent of the consideration represented by those mortgages the impugned mortgage was binding on their shares also. The learned Judges did not accept that contention.

An alienation valid when it was made cannot be questioned by a son adopted after the date of the alienation.⁹

Illustration (1).—A and his son B are the only coparceners constituting a joint family. Suppose A alienates some family property to X. The alienation binds A's half share in the property concerned in any event. If X wishes to enforce it against any interest of the joint family beyond A's share, he

Note 25.

⁵ 19 Mys. L.J. 310, 319 ; see *Mayne's Hindu Law*, 10th end., p. 512.

⁶ 19 Mys. L.J. 310, 320 ; *Bhagwat Prasad v. Debichand Dogra*, 1942 Pat. 99.

⁷ *Tulshiram v. Babu*, 33 All. 654 ; 10 I.C. 908.

⁸ 19 Mys. L.J. 310 : 46 Mysore 547.

⁹ *Rambhat v. Lakshman*, 5 Bom. 630 ; *Brij Raj v. Alliance Bank of Simla*, 1936 Lah. 946.

must prove legal necessity or benefit for the alienation or that he made reasonable inquiries about it. Before *X* seeks to enforce the alienation on something beyond *A*'s half share, *A* has another son *C* born. As *C* acquires an interest as soon as he is conceived, he is also entitled to challenge the effectiveness of the alienation against anything beyond *A*'s half share. *X* has to make out his case and to make it out against every coparcener interested in the result. While that question is open *C* has certainly an interest in it and can resist *X*'s claim or can himself challenge it. [See *Gurumurthiah v. Seetharamiah*, 19 Mys. L.J. 310, 319, *Bhagwat Prasad v. Devi Chand Dogra*, 1942 Pat. 99 and *Brij Jiwandas v. Kawal Main Bibi*, 1942 All. 444.]

Illustration (2).—In the above example suppose *B*, the first son of *A*, at a later date but before *C* comes into existence, joins in the alienation or adopts it or ratifies it, then it will be noticed that the alienation will become complete against the whole of the existing joint family at the time. If that happens the whole matter will be concluded before *C* comes into existence. In such circumstances *C* has no right to question the alienation. [See 19 Mys. L.J. 310, 320; and 1942 Pat. 99 above.]

26. *Suit to set aside alienations.*—An alienation of coparcenary property in excess of his powers by a manager or other coparcener can be set aside in a suit by any of the non-alienating coparceners. The alienation will not however be set aside in its entirety because in any event it is binding to the extent of the alienor's individual share in it as on the date of the alienation.¹ The alienation will also be binding as against the shares of those coparceners who assent to it or ratify it.² The fact that the institution of a suit by the sons to set aside alienation by their father has been instigated by their father does not prevent the plaintiffs from being granted the reliefs to which they are entitled in law.³

Mesne-profits.—As the alienation by a manager is valid until it is repudiated, the alienee may be required to pay

Note 26.

¹ *Nagappa v. Chowdappa*, 29 Mysore 153 : 2 Mys. L.J. 284; *Doddanniah v. Nanja*, 32 Mysore 247 : 5 Mys. L.J. 118; *Bank of Mysore v. Veerappa*, 45 Mysore 26 : 18 Mys. L.J. 113, 131; *Srinivasan v. Puttegowda*, 45 Mysore 228 : 18 Mys. L.J. 276; *Gurumurthiah v. Seetharamiah*, 19 Mys. L.J. 310 : 46 Mysore 547.

² 19 Mys. L.J. 310 : 46 Mysore 547.

³ *Paramanand v. Nummulal*, 1942 Mad. 232 : (1941) 2 M.L.J. 923.

mesne-profits only from the date of the suit challenging the alienation.⁴

27. *Limitation for setting aside alienations.*—The period of limitation for a suit by a Hindu governed by the law of Mitakshara to set aside an alienation, by his father, of joint family property, is twelve years from the date when the alienee takes possession of the property.¹ The fact that the father executes the deed of alienation also as guardian of his minor sons does not take it out of Art. 126 and bring it under Art. 44 Lim. Act,² nor the fact that the alienation is made by the father in conjunction with an uncle.³ Art. 126 is not applicable if the alienee never gets possession of the property under the alienation. In such a case the right of the sons amounts merely to obtaining a declaration that the deed is invalid and the suit will be governed by Art. 120.⁴

The bar of limitation against an elder son to sue for setting aside his father's alienation does not operate as a bar against a younger son who can bring a suit of his own within three years of his attaining majority.⁵ If he succeeds in his attempt the benefit accrues in favour of all.⁶ But if the eldest son on attaining majority becomes the manager of the joint family (as for instance where the father dies after the alienation) and so capable of giving a discharge within the meaning of Sec. 7 Lim. Act, his failure to take advantage

Note 26.

⁴ *Nagiah v. Munia*, 38 Mysore 379 : 11 Mys. L.J. 422 ; *Ramaswamy v. Venkatrama*, 1924 Mad. 81 : 46 Mad. 815 ; *Gangabisan v. Vallabdas*, 48 Bom. 428.

Note 27.

¹ See Art. 126, Lim. Act, Appendix V.

² *Sundar Singh v. Bore Gowda*, 44 Mysore 445 : 17 Mys. L.J. 216.

³ *Deo Nundan v. Musafir Singh*, 1927 All. 54.

⁴ *Murai Ali v. Ramaswamy*, 41 Mad. 650 ; *Angud Singh v. Bahadur Singh*, 1929 All. 750.

⁵ *Jawahur Singh v. Udai Prakash*, 1926 P.C. 16 : 48 All. 152 [Eldest son was not manager as father was living].

⁶ *Ram Kishore v. Jai Narain*, 40 Cal. 966, 979 P.C.

of the three years allowed to him by Secs. 6 and 8 Lim. Act to bring a suit after he becomes the manager bars the younger brothers also.⁷

The cause of action to set aside an alienation arises when the alienation is made but the period of limitation begins to run from the date when the alienee takes possession of the same.⁸ That is the material date not only as regards the suit of a son in existence at the date but also the suit of a son born thereafter. The birth of a son subsequent to the alienation does not create a fresh cause of action in his favour so as to afford a new starting point from that date nor can the extension of three years given by Sec. 6 Lim. Act be availed of by the sons not in existence at the date of the alienation.⁹

Note 27.

⁷ 44 Mysore 445 ; *Javare Gowda v. Mari Gowda*, 28 Mysore 286 : 1 Mys. L.J. 72 ; *Karan Singh v. Mst. Jetar Kuar*, 1937 Pat. 435 F.B.

⁸ *Ramaswamy v. Vanamali*, 26 I.C. 873, 896.

⁹ *Ranodip Singh v. Parameswar Prasad*, 1925 P.C. 33 : 47 All. 165 ; *Dhanraj v. Ramnaresh*, 1924 All. 912 ; *Lachmandas v. Sundar Das*, 59 I.C. 678 : 1 Lah. 558.

CHAPTER VIII

DEBTS

SYNOPSIS

Note.—(1) Debts in general; (2) Liability of separate property for debts; (3) Liability of undivided coparcenary property for coparcener's debts; (4) Liability of joint family property for father's debts—Pious obligation; (5) Pious obligation of son during and after father's lifetime; (6) Pious obligation and alienations by father; (7) Pious obligation and father's personal liability for his mortgage debt; (8) Son's liability on setting aside of sale by father; (9) Pious obligation and 'Antecedent' debt; (10) Son's pious liability after partition; (11) Extent of liability of grandson and great-grandson; (12) Immoral (Avyavaharika) debts; (13) Debt for a cause repugnant to good morals; (14) Time-barred debt; (15) Burden of proving immorality of debt; (16) Creditors' suits; (17) Sale of family property in execution of decree against father alone; (18) Mortgage decree against father; (19) Limitation for suits.

1. *Debts in general.*—The liability of a Hindu to pay the debts of another arises under Hindu Law from three sources, namely (1) the religious duty of rescuing an ancestor from the penalties arising from the non-payment of his debts, (2) the moral duty of paying the debts contracted by one whose assets have come to his hands, and (3) the legal duty of paying a debt contracted by one person as an agent, express or implied, of another.

This chapter deals with 'debts' contracted by a Hindu male for his own private purposes as opposed to debts contracted for the purposes of the joint family, and also the liability of his separate and joint family properties for payment of such debts. The pious obligation of a Hindu to discharge the private debts of his father, grandfather or great-grandfather which are not incurred for illegal or immoral purposes is also dealt with.

In this connection it should be remembered that Mysore follows the pure Hindu Law rule that the pious obligation of a son to pay his father's personal debts does

not arise until after the father's death,¹ whereas outside Mysore this liability is held to exist even in the lifetime of the father.² In consequence of this fundamental difference in the doctrine of pious obligation, the law in Mysore in this respect has developed into a structure quite distinct from that prevailing outside Mysore. The doctrine of pious obligation accepted in Mysore has been carried into its logical conclusions by the decisions of the High Court in working out the rights of the father, the son and the father's creditor, etc.,³ and naturally they are different from the conclusions arrived at by the British Indian Courts.

2. *Liability of separate property for debts.*—The separate property of a Hindu is liable for his debts whether he is alive or dead. After his death his heir is liable to pay the debts, but only to the extent of the assets inherited from the deceased. The heir is not personally liable to pay those debts of the deceased even if he is his son, grandson or great-grandson.¹ But if he disposes of the property inherited from the deceased even before payment of debts due by the deceased, he will be personally liable to the creditor to the extent of the property disposed of.²

Pure Hindu Law drew a distinction between the liability of the son and grandson on the one hand and the liability of other heirs on the other. While other heirs were liable only to the extent of the assets inherited from the deceased, an heir who was a son or a grandson was liable even if no assets had been inherited by him from the deceased (debtor). In other words, the son and grandson

Note 1.

¹ *Kala v. Javare Gowda*, 15 Mysore 233 F.B.

² *Brij Narain v. Mangla Prasad*, 1924 P.C. 50 ; 46 All. 95 ; *Sat Narain v. Sri Kishen Das*, 1936 P.C. 277 ; 164 I.C. 6.

³ *Thippanna v. Rudramma*, 16 Mys. L.J. 47 ; *Talkad Rama Rao v. Thammanna*, 44 Mysore 357 ; 17 Mys. L.J. 347.

Note 2.

¹ *Venkappiah v. Visveswariah*, 15 Mys. L.R. 196 ; *Hythan v. Appavoo Chetty*, 16 Mys. L.R. 271 ; *Lallu v. Tribhuvan*, 13 Bom. 653.

² *Jamiatram v. Parbhu Das*, (1872) 9 Bom. H.C. 116.

were personally liable for the debts of their deceased ancestor. This distinction is not followed now. The liability of sons and grandsons *as heirs* is now no more than the liability of any other heir.

The obligation of an heir to pay the debts of the person whose estate he has inherited does not rest upon any duty to relieve the deceased at any cost, but upon the broad equity that he who takes the benefit should take the burden also.³ The liability to pay the debts passes with the estate of the deceased. Thus where a mother inherited property from her son who was himself under an obligation to pay his father's debts out of his property, it was held that his liability to pay the debts passed on to the mother along with his assets.⁴

As the debts have to be paid by the heir out of the assets if any inherited from the deceased, the heir cannot object on the ground that the debt was incurred by the deceased for immoral purposes or was in respect of a time-barred debt.⁵

3. *Liability of undivided coparcenary interest for coparcener's debts.*—It is seen that the separate property of a person can be proceeded against for his debts in his lifetime or even after his death. The undivided interest of a Hindu is also liable for his personal debts. But his undivided interest is not liable after his death (except where he is the father), unless it was attached in his lifetime in execution of a decree against him,¹ because on his death his

Note 2.

³ See *Mayne's Hindu Law*, 10th edn., p. 441.

⁴ *Jwaramull v. Srinivasa Rao*, 43 Mysore 566 : 17 Mys. L.J. 1.

⁵ *Narayanaswamy v. Swamy Das*, 6 Mad. 293 ; *Ram Kishen v. Chedi*, 1922 All. 402 : 44 All. 628.

Note 3.

¹ *Deen Dayal v. Jagdeep Narain*, 3 Cal. 198 P.C. ; *Veerabasaviah v. Ramappa*, 6 Mysore 40 ; *Chikkamuniredly v. Baliah*, 8 Mysore 17 ; *Venkatappa v. Mariappa*, 8 Mysore 108 ; *Thumbay Gowda v. Syed Buran*, 19 Mysore 142 ; *Thippanna v. Rudranna*, 16 Mys. L.J. 47.

interest passes to the other coparceners by survivorship and they are not liable for his (deceased coparcener's) debts.² If it is attached in his lifetime it may be sold even after his death.³ A mere decree obtained against a coparcener but not followed up by an attachment of his undivided interest in his lifetime will not defeat the right of survivorship of the other coparceners.⁴

An attachment before judgment of the undivided interest of the coparcener not followed by a decree in his lifetime does not also defeat the right of survivorship of the others.⁵ There is a difference of opinion whether even if it is followed by a decree in his lifetime it will defeat the right of survivorship of the other coparceners without a reattachment after decree.⁶

Illustration.—*A* and his brother *B* are members of a joint family. *A* is possessed of separate property also. *C* obtains a decree against *A* for a debt due to him, in *A*'s lifetime. Before any step is taken in execution of the decree *A* dies leaving his widow and his brother *B*. *C* may enforce his decree against the separate property of *A* in the hands of his widow. But he cannot attach *A*'s undivided interest which has passed to *B* by right of survivorship. If *C* had got *A*'s undivided interest attached in *A*'s lifetime it would not pass to *B* by survivorship and he could get it sold even after *A*'s death.

In the above case *C* could even sue *A*'s widow for the debt due to him from *A*, if he had not sued *A* in his lifetime. *C* can realise his decree by proceeding against *A*'s separate property in the hands of *A*'s widow. But *C* could not sue *B* for the debt due to him from *A*.

If in the above *B* were the son of *A*, *C* could sue *B* even after the death of *A* because *B* is under a pious obligation to discharge *A*'s debt if it was not tainted with immorality. In addition *B* is liable as heir of *A*. Hence *C* can recover the debt out of *A*'s assets in *B*'s hands as well as out of the entire joint family properties including *B*'s interest therein.

Note 3.

² 8 Mysore 108 ; *Suraj Bansi Koer v. Sheo Prasad*, 5 Cal. 148 P.C.

³ 19 Mysore 142 ; *Fakirchand v. Sant Lal*, 1926 All. 157 : 48 All. 4.

⁴ 6 Mysore 40 ; 5 Cal. 148 P.C.

⁵ *Nanjappa v. S. L. S. Bank*, 17 Mysore 39 ; *Kaliyanna v. Masiyappa*, (1942) 2 M.L.J. 750.

⁶ *Lakshman v. Vinayak*, 40 Bom. 329 [Does not by itself defeat right of survivorship] ; *Sundarlal v. Raghunandan*, 1924 Pat. 465 [do.] ; Contra.—*Sankaralinga v. Off. Receiver*, 1926 Mad. 72 [Reattachment after decree is unnecessary] ; see also O. 38, R. 11, C.P.C.

4. *Liability of joint family property for father's debts—Pious obligation.*—It is already noticed that one coparcener is not liable for the personal debts of another coparcener. To this there is an exception, namely, that the undivided sons, grandsons and great-grandsons of a Hindu male are liable to pay his debts which are not contracted for an illegal or immoral purpose.¹ This liability of the sons to pay the just debts of the father arises from an obligation of religion and piety placed upon the sons under the Hindu Law. Mayne explains the rule underlying the principle thus: 'The notion of a religious as well as a civil obligation to pay debts evidences the introduction of Brahmanical theories into a law which was previously founded merely upon natural justice. The kindred theory that the soul of a deceased debtor could not find repose till his debts were discharged probably grew up still later. The religious theory of obligation could well co-exist with the civil theory, as affording an additional sanction for a liability which was already recognised. The antiquity of the texts which state this religious theory shows that it had sprung up before the family bonds were relaxed, by allowing the sons to possess a co-ordinate interest in the property and a right to restrain their father in his dealings with it. But even after this later development, natural equity and convenience would continue to attach a specially binding character to debts which were contracted by the official head and representative of the family, while the religious obligation would assume greater prominence in proportion as the secular obligation was weakened'.²

Note 4.

¹ *Krishnappaji v. Devappaji*, 3 Mys. L.R. 159; *Subbannachar v. Kempa Chowda Jetty*, 4 Mys. L.R. 210; *Chandrasekhara Devaro v. Siddalingappa* 5 Mys. L.R. 300; *Javali Appanniah v. Venkatanarasiah*, 5 Mys. L.R. 352; *Ramachandriah v. Bhaskaria*, 5 Mys. L.R. 157; *Kala v. Javare Gowda*, 15 Mysore 233 F.B.

² *Mayne's Hindu Law*, 9th edn., p. 348; see also *Nachimuthu v. Balasubramania*, 1939 Mad. 450; (1939) Mad. 422.

Under the pure Hindu Law the liability of the son to pay the father's private debts did not exist during the father's lifetime. This is so in Mysore even now.³ But in British India the son's liability is held to exist even in the lifetime of the father.⁴ Secondly under pure Hindu Law the son's liability to pay the father's private debt extended to his (son's) personal property also. But this liability has now been removed both in and outside Mysore and has been limited to the extent of his interest in the coparcenary property.⁵ Hence in regard to pious obligation, the son's position in Mysore is now less onerous than that outside Mysore.

It has sometimes been remarked that the rule of pious obligation of a Hindu son is an illogical relic of antiquity and is incongruous with modern conditions.⁶ That it is far from it is clear from the very pertinent observation of Iqbal Ahmed, J., "So far as I can see, this rule was introduced as a sort of corrective to the rule that every male member of a joint Hindu family acquires an interest in the joint family property from the moment of his birth, and therefore no member of such family can predicate the extent of his share or can alienate the same. If by the mere fact of his birth the newly born son acquires an interest in the joint family property, and thus automatically reduces the extent of his father's interest in the same, it is but fair and just that he should shoulder, along with the father, the liabilities of the father. To make provision for the payment of debts due to a creditor, far from being 'unsuited to any but a primitive and patriarchal society' is in consonance with common honesty and is, I should think, the recognised

Note 4.

³ *Kala v. Javare Gowda*, 15 Mysore 233 F.B.

⁴ *Brij Narain v. Mangla Prasad*, 1924 P.C. 50 : 46 All. 95.

⁵ *Pedz Venkanna v. Sririvasa*, 41 Mad. 136, 142 : *Devidass v. Judu Ram*, 1933 Lah. 857 : 147 I.C. 225.

⁶ *Subramanya v. Sabapathi*, 1928 Mad. 657 : 51 Mad. 361 F.B. ; *Srinivasa Iyengar v. Kuppaswami*, 44 Mad. 801.

practice of the civilized world. The liability imposed on a son to pay the just debts of his father is not a gratuitous obligation thrust on him by Hindu Law but is a necessary corollary—if not a salutary counter-balancing proviso—to the principle that the son from the moment of his birth acquires along with the father, an interest in joint family property.”⁷ In a Full Bench of the Madras High Court, Krishnaswamy Iyengar, J., expressed agreement with the above view of the fundamentals of the doctrine and observed: ‘As long as the joint family system lasts with its doctrine of survivorship and the recognition of equal and co-ordinate rights in the sons, so long it seems to me that the theory of pious obligation should be maintained in the interests of the fair name of Hindu Law, and its title to rank with civilized systems of jurisprudence.’⁸

5. *Pious obligation of son during and after father's lifetime.*—It has been held by a Full Bench in *Kala v. Javare Gowda*¹ that the liability of a Hindu son for the debts of his undivided father does not arise as long as the debtor is himself alive and is not so disabled by disease or other physical disability as not to be able to discharge it himself or has been absent so long as to raise a presumption of death. In that case the father alone had hypothecated the properties belonging to the joint family of himself and his son, and the creditor who purchased the properties in execution of the decree he obtained against the father was resisted by the son in getting possession of them. Thereupon the creditor brought a suit against the son for possession of the properties, and the son pleaded that his interest in the properties was not affected by the sale because there was no proof by the creditor that the debt contracted by the father was for

Note 4.

⁷ *Lalta Prasad v. Gajadhar*, 1933 All. 235 : 55 All. 283.

⁸ *Lingayya v. Punneyya*, 1942 Mad. 183 : (1942) 1 M.L.J. 57, 67 F.B.

Note 5.

¹ *Setlur, J.*, in 15 Mysore 233 F.B. ; *Lingamma v. Dyavanna*, 10 Mysore 71 [Not good law. Must be regarded as overruled by the Full Bench].

purposes binding on the family. In other words, it was contended that in the lifetime of the father the son's interest in coparcenary property was not liable for a debt contracted by the father for purposes not binding on the family. The Full Bench upheld the son's contention and enunciated the above proposition as regards the pious obligation during the father's lifetime, in consonance with the Hindu Law texts on the subject.

It follows from the above that a Hindu father during his lifetime has no power to alienate the interests of his undivided sons in the coparcenary property in order to discharge his private debts.² Putting it the other way it is seen that in the lifetime of the father it is open to a son to challenge a personal debt contracted by the father as not binding on him (son) or on his interest in coparcenary property, whether it is a simple money debt or one charged on family property.³ If the joint family consists of other coparceners besides the father and the sons, those other coparceners (collaterals of father) can undoubtedly challenge such a debt of the father as not binding on them or their shares during as well as after the lifetime of the debtor.⁴ But once the debtor (father) is dead the sons of the debtor cannot say that their interests in the coparcenary property are not liable for the father's personal debts which are not tainted with illegality or immorality, because the pious obligation of the son comes into existence and alters the position of the sons.⁵

Note 5.

² *Rudrappa Setty v. Rangoojee Rao*, 45 Mysore 83 : 18 Mys. L.J. 133, 135.

³ *Rudramma v. Chikkarangiah*, 27 Mysore 155 [Mortgage] ; *Nanjiah v. Chandregowda*, 41 Mysore 382 : 14 Mys. L.J. 510 ; *Thippanna v. Rudramma*, 16 Mys. L.J. 47 ; *Venkatapathiah v. Ramiah Setty*, 19 Mys. L.J. 290.

⁴ 16 Mys. L.J. 47 ; *Doda Thama v. Mangia Oodopa*, 16 Mys. L.R. 132 ; *Veerasaviah v. Ramappa*, 6 Mysore 40.

⁵ 16 Mys. L.J. 47 ; *Rama v. Subramanya Jois*, 5 Mysore 69 ; *Subbegowda v. Kothandarama Setty*, 11 Mysore 84.

Every Hindu son is under a pious obligation to discharge his undivided father's debts which are not tainted with illegality or immorality, irrespective of the fact whether the father (debtor) is or is not the manager of the joint family or whether the joint family is or is not composed of persons other than the father and the sons.⁶ Thus in *Subbegoowda v. Kothandarama Shetty*,⁷ where the debtor died leaving his undivided father and son, it was held that the circumstance that the debtor was only a subordinate member of the family at the time of his death did not make any difference as regards the pious obligation of the son to discharge the debts of the deceased. Some observations to the contrary in *Venkatappa v. Mariappa*⁸ it is submitted are not of much force.

6. *Pious obligation and alienations by father.*—Where a father in a joint Hindu family alienates (sale, mortgage, etc.) the family properties for legal necessity or benefit of the family, it is clear that the alienation binds the interests of the sons also. But where the alienation by the father is for his own benefit and not for any purpose binding on the family, is the son's interest liable by reason of any pious obligation after the father's death? The question was answered in the negative in *Nanjiah v. Chandregowda*¹ and it was held that the doctrine of pious obligation applies only to debts and not to alienations. In that case the father had executed a mortgage of family properties including the sons' interests. The sons contended that their interests in the properties were not liable under the mortgage because

Note 5.

⁶ Iqbal Ahmed, J., in *Lalta Prasad v. Gajadhar*, 1933 All. 235 : 55 All. 283 ; *Bankey Lal v. Durga Prasad*, 1931 All. 512 : 53 All. 868 F. B. ; Sulaiman, C.J., in *Chotey Lal v. Ganpat Rai*, 57 All. 176 F. B. ; *Virayya v. Parthasarathi*, 1933 Mad. 690 : 65 M.L.J. 417 ; *Devi Das v. Jade Ram*, 15 Lah. 50 : 1933 Lah. 857 and 4 Mad. 1, 19, 47.

⁷ 11 Mysore 84.

⁸ 8 Mysore 108.

Note 6.

¹ 41 Mysore 582 : 14 Mys. L.J. 510.

the mortgage (alienation) by the father was not for legal necessity or for benefit of the family, but for his personal benefit. The father died in the course of the suit. The trial court observed that the sons were anyhow liable under the mortgage (that is, even if the mortgage was for the father's personal benefit) on account of the pious obligation cast on them as a result of the father's death. This was reversed by the High Court in appeal. The learned Judges were inclined to the view that a mortgage is an alienation of interest possessed in the mortgaged properties (and not a mere debt secured by the mortgage) and that therefore the doctrine of pious obligation which applies to debts cannot apply to alienations.² The effect of this is that where a father has mortgaged family properties, the mortgagee cannot by reason only of the death of the father hold the son's interest liable under the mortgage. Even if the father is dead, the mortgagee can succeed in making the son's interests also liable thereunder, only if he proves that the mortgage was for legal necessity or for benefit of the family or that he made reasonable inquiries about that.³ What applies to a mortgage applies also to an alienation by way of sale.⁴

7. *Pious obligation and father's personal liability for his mortgage debt.*—If a Hindu father mortgages the joint family properties of himself and his sons for a purpose not binding on the joint family, it is already seen (previous Note) that even if he dies without discharging it the mortgagee's right could not be enforced against the interests of the sons in the mortgaged properties by virtue of any pious obligation

Note 6.

² *Ibid.*, p. 515 ; *Biswanath v. Jagdeep Narain*, 40 Cal. 342 [Mortgage is an alienation of interest and not a debt] ; *Jagdish Prasad v. Hoshyar Singh*, 1928 All. 596 : 51 All. 136 F.B. [do.] ; see definition of 'mortgage' in T.P. Act.

³ 14 Mys. L.J. 510, 515 ; *Bank of Mysore v. Veerappa*, 45 Mysore 26 : 18 Mys. L.J. 113.

⁴ *Rudrappa Setty v. Rangoojee Rao*, 45 Mysore 83 : 18 Mys. L.J. 133.

of the sons to discharge their father's debts.¹ The mortgagee is no doubt entitled to recover the mortgage debt by proceeding against the father's share in the mortgaged properties. If however the amount due is not realised by the sale of the father's interest alone, the balance still due will be a debt due from the father or after his death from his estate. In the latter event the doctrine of pious obligation of the sons would apply to the recovery of such balance (provided the debt was not tainted with immorality), and the same could be recovered from the sons' interests also in what had been the joint family property of themselves and their father by recourse to O. 34, R. 6, Civil Procedure Code, provided such recovery is not barred by any rule of limitation.²

8. *Son's liability on setting aside of sale by father.*—Where a father sells family property without the needs of the family requiring the transaction to be entered into, he becomes liable to return to the vendee a proportionate part of the purchase money, on the sale being set aside so far as the sons' interests are concerned. On this event happening, the vendee can compel the father to make the refund. If the transaction is set aside after his death the vendee has a claim against his estate. In the latter event the sons will be under a pious obligation to discharge the debt, namely, the proportionate part of the purchase money.¹ The liability of the father, contingent though it be, is still inherent in the sale itself and is not a new liability coming into existence for the first time when the sale is set aside.²

Note 7.

¹ *Nanjiah v. Chandregowda*, 41 Mysore 582 : 14 Mys. L.J. 510.

² *Rudrappa Setty v. Rangoojee Rao*, 45 Mysore 83 : 18 Mys. L.J. 133 ; *Bank of Mysore v. Veerappa*, 45 Mysore 26 : 18 Mys. L.J. 113, 131 ; *Kandaswami v. Kuppu*, 43 Mad. 421 ; *Chandradeo v. Mata Prasad*, 31 All. 176, 194 F.B.

Note 8.

¹ *Lingayya v. Punneyya*, 1942 Mad. 183 : (1942) 1 M.L.J. 57, 62 F.B.

² *Ibid.*, p. 69 ; *Raman Pandithan v. Satha Kudumban*, 31 M.L.J. 502.

9. *Pious obligation and 'Antecedent' debt.*—In *Brij Narain v. Mangla Prasad*¹ their Lordships of the Privy Council describe the doctrine of 'antecedent debt' as a part of the doctrine of pious obligation and lay down the proposition that if the father purports to burden the family estate by mortgage, then it would bind the estate including the sons' interests therein, provided the mortgage is to discharge a debt (even if it was contracted for his personal benefit) which is antecedent to the alienation and not tainted with illegality or immorality.² The validity of an alienation made to discharge an antecedent debt rests upon the pious duty of the son to discharge his father's debt which is not incurred for an illegal or immoral purpose and generally speaking no question of legal necessity arises to be considered in such a case.³ Nor is it necessary for the alienee to show that he made reasonable inquiry as to the purpose of the alienation or to prove that the money was borrowed for the benefit of the family.⁴ It is not even necessary that the prior and subsequent creditors should be different.⁵ Thus where a previous mortgage deed is renewed in favour of the same mortgagee and the consideration for it is the amount due on the earlier one, the subsequent alienation would be one for an 'antecedent' debt.⁶ But where the mortgage is executed to secure a loan made at the time of the mortgage, there is no debt antecedent to the mortgage. Such a mortgage

Note 9.

¹ 1924 P.C. 50 : 46 All. 95.

² *Sat Narain v. Sri Kishen Das*, 1936 P.C. 277 : 164 I.C. 6 ; *Madhu Sudar v. Bhagwan*, 1929 Bom. 213 ; *Bhim Singh v. Ram Singh*, 1924 All. 309 ; see also *Jawahir Singh v. Udai Prakash*, 1926 P.C. 16 : 48 All. 152 [Debt not antecedent to alienation—alienation set aside].

³ 1924 P.C. 50 ; *Narain Prasad v. Sarnam Singh*, 39 All. 500 P.C. ; *Rama Rao v. Hanumantha Rao*, 1930 Mad. 326 : 52 Mad. 826.

⁴ *Bhagwat Prasad v. Girja Kuar*, 15 Cal. 717, 724 P.C. ; *Tulshi Ram v. Bishnath Prasad*, 1927 All. 735 : 50 All. 1 ; *Anantu v. Ram Prasad*, 46 All. 295.

⁵ *Ramkaran v. Baldeo*, 1938 Pat. 44 : 17 Pat. 168 ; *Bharatpur State v. Sri Kishen Das*, 1936 All. 327 : 58 All. 804 F.B.

⁶ *Gopal Das v. Topan Das*, 16 Lah. 624 ; *Nackimuthu v. Balasubramania*, 1939 Mad. 450.

is not one to pay off an 'antecedent' debt to which the doctrine of pious obligation applies.⁷ If the alienation impeached is one for legal necessity, it is not necessary, to bind the son's interests, to have recourse to the doctrine of antecedent debt.⁸

The position in Mysore in this respect is different, because here the pious duty of the son does not exist during the lifetime of the father, the consequence of which is that an alienation by the father to discharge his personal debts (whether antecedent or not) cannot bind the sons' interests in the family properties in the lifetime of the father. In other words, the father has no power to alienate the son's interest in the family estate to pay off his personal debts.⁹ Thus where a Hindu father hypothecated the family properties first in 1902 and again in 1905 to pay off the earlier one, and the mortgagee obtained a decree for sale and the sons thereupon sued the father and the alienee for a declaration that the decree did not affect their shares in the family properties, it was held that the alienee was not entitled to a decree against the sons in the absence of proof of necessity for the alienation and that though the debt secured by the second hypothecation became an 'antecedent' debt, the sons were not bound by it since the pious duty to pay the father's debt does not arise as long as the father is alive.¹⁰ It may therefore be said that the doctrine of antecedent debt as enunciated in Brij Narain's case is not recognised in Mysore. In a more recent case it is observed that though a subsequent alienee who advances money to a father to pay off previous debts is one stage removed from those debts, he cannot be let off more lightly in the matter of showing

Note 9.

⁷ *Chandradeo v. Mata Prasad*, 31 All. 176, 179 F.B. ; *Sahu Ram v. Bhup Singh*, 39 All. 437 P.C. ; *Jawahir Singh v. Udai Prakash*, 1926 P.C. 16.

⁸ *Lal Bahadur v. Ambika Prasad*, 1925 P.C. 264 : 47 All. 995.

⁹ *Kala v. Javare Gowda*, 15 Mysore 233 F.B. ; *Annappa Setty v. Gavi Rangappa*, 28 Mysore 10.

¹⁰ *Rudramma v. Chikkarangiah*, 27 Mysore 155.

necessity or benefit for the money advanced by him so as to make it binding upon the junior members. The subsequent alienee must show that those prior debts so paid off were binding on the junior members, before he can make his own advances binding upon them.¹¹ An alienation by the father to pay off his personal debts cannot even be binding on the sons' interests as an alienation by the father for a legal necessity because it is held that the payment of a manager's or a father's private debts is not a family necessity.¹²

10. *Son's pious liability after partition.*—When a partition takes place between the coparceners, it is only the father and his share of the coparcenary property that can thereafter be liable for a debt contracted by the father for his personal benefit.¹ The divided sons will not become liable for such debts even after the death of the father subsequently, under the doctrine of pious obligation. If on the father's death they inherit his property, they take it as his heirs burdened with his debts.² Thus where in a suit for partition instituted by an adult son it was found that one of the debts contracted by the father was not binding on the sons' interests, it was held that the sons take their shares free of that debt and that a subsequent event such as the death of the father pending the suit would not alter the liability for such a debt so far as the sons were concerned.³ All other courts in India have held that the son is liable after partition for a debt contracted by the father before partition.⁴

Note 9.

¹¹ *Sampangiramah v. Subba Rao*, 42 Mysore 564 : 15 Mys. L.J. 529 ; *Uruggege Gowda v. The City Co-operative Bank*, 15 Mys. L.J. 230 ; *Venkatapathiah v. Ramanna Setty*, 19 Mys. L.J. 290, 294.

¹² 19 Mys. L.J. 290, 294 ; *Thippanna v. Rudranna*, 16 Mys. L.J. 47.

Note 10.

¹ *Talkad Rama Rao v. Thammanna*, 44 Mysore 357 : 17 Mys. L.J. 347.

² *Ibid.*

³ *Ibid.*, p. 351.

⁴ *Subramania v. Sabhapathi*, 1928 Mad. 657 : 51 Mad. 361 F.B. ; *Annabhat v. Shivappa*, 1928 Bom. 232 : 52 Bom. 376 ; *Bankey Lal v. Durga Prasad*, 1931 All. 512 : 53 All. 868 F.B. ; *Atul Krishna v. Lala Nandanji*, 1935 Pat. 275 F.B.

A creditor of the father can however even after partition proceed against a particular son's interest if the debt was contracted by the father expressly for that son's benefit, for instance, for his marriage,⁵ or where the son undertakes at the time of partition to discharge the debt.⁶ This is however not under the doctrine of pious obligation but under the general rule that he who takes the benefit should be liable to the correlative obligation.⁷

Debt contracted after partition.—The sons are not liable under the doctrine of pious obligation to discharge a debt incurred by the father after partition.⁸

11. *Extent of liability of grandson and great-grandson.*—Brihaspati says : 'The sons must pay the debts of their father, when proved, as if they were their own, that is, with interest ; the son's son must pay the debt of his grandfather but without interest ; and the son's son's son shall not be compelled to discharge it unless he has assets'—Colebrooke, Vol. I, page 265. Judicial decisions in the present day do not recognise this distinction between their respective liabilities. They are all equally liable under the obligation of piety to discharge the father's debts which are not tainted with illegality or immorality.¹ The great-grandson's liability is co-extensive with that of the son and grandson and is available to a creditor even in the lifetime of the son or grandson.²

Note 10.

⁵ *Venkataramaniah v. Rama Rao*, 10 Mys. L.R. 177.

⁶ *Suryanarayana Setty v. Subbaraya*, 10 Mys. L.J. 8.

⁷ 10 Mys. L.R. 177.

⁸ See *Mulla's Hindu Law*, 9th edn., p. 337.

Note 11.

¹ *Lachmandas v. Khunnulal*, 19 All. 26 F.B. ; *Ladu v. Gobardhandas*, 1925 Pat. 470 ; *Masit Ullah v. Damodar*, 1926 P.C. 105 : 48 All. 418 ; *Lanke Hanumanthiah v. Ramayya*, 36 Mysore 416 : 9 Mys. L.J. 455.

² 1926 P.C. 105 ; *Chet Ram v. Ram Singh*, 1922 P.C. 247 : 44 All. 368. [Earlier view of the P.C.—grandson not liable in son's lifetime].

12. *Immoral (avyavaharika) debts*.—The basis of the pious obligation rule is the benefit which will accrue to the soul of the father by the discharging of his earthly obligations and thus rescuing him from the penalties arising from the non-payment of his debts.¹ The rule of pious obligation is not confined to a debt known to the English Common Law but applies to all financial obligations incurred by the father for purposes which are not illegal or immoral.² It is the purpose for which the money is obtained that determines the character of the debt and so long as the object is neither illegal nor immoral it is enough to give rise to the son's pious obligation.³ In other words, the pious obligation rule extends to all debts incurred by the father which are not *Avyavaharika*, that is, which are supportable as valid by legal arguments and on which a right could be established in the creditor's favour in a court of justice.⁴ The following are held to be debts tainted with immorality which the sons, grandsons and great-grandsons are not under a pious obligation to discharge⁵ :—

- (1) Debts for spirituous liquors ;
- (2) Debts due for losses at play ;
- (3) Debts due for promises made without consideration ;
- (4) Debts contracted under the influence of lust or wrath ;
- (5) Debts for being surety for the appearance or for the honesty of another⁶, but not debts incurred

Note 12.

¹ Brihaspathi's Text—see Colebrooke, Vol. I, p. 334 ; *Lingayya v. Punmayya*, 1942 Mad. 183 F.B.

² *Nachimuthu v. Balasub amania*, 1939 Mad. 450.

³ 1942 Mad. 183 F.B. ; *Chatkao Singh v. Hasan*, 1929 Oudh 458.

⁴ *Narasinga Setty v. Viswanathiah*, 43 Mysore 661 : 17 Mys. L.J. 47 ; Sadasiva Iyer, J., in *Venugopala v. Ramanadhan*, 37 Mad. 458.

⁵ *Khalilul v. Gobind*, 20 Cal. 328, 336.

⁶ *Tukaram v. Gangaram*, 23 Bom. 454 ; *Satyacharu v. Satpir*, 51 I.C. 791 ; *Lakshminarayana v. Hanumantha Rao*, 1935 Mad. 144 : 58 Mad. 375.

as surety for payment of money lent⁷ or for delivery of goods ;

(6) Unpaid fines and tolls ; and

(7) Any debt which is Avyavaharika, that is, a debt 'for a cause repugnant to good morals'.⁸

13. *Debt for a cause repugnant to good morals.*—A debt may arise out of a contract as where money is borrowed by the father, or it may arise out of an act which amounts to a criminal offence, e.g., theft, or it may arise out of a tort or civil wrong. Each will be considered separately.

Money borrowed by a father for payment of a bribe to induce a Hindu woman to take one of his sons in adoption is an avyavaharika debt and the sons are not liable for it.¹ So also is money borrowed to pay off a fine inflicted for a criminal offence.² Where a Hindu father started a false and speculative suit in *forma pauperis* and on his failure was directed to pay the Government the court fee leviable on the plaint, it was held that the costs incurred by him was an avyavaharika debt.³ But costs of a suit decreed against the father (defeated defendant) is not an avyavaharika debt.⁴ The liability of a Hindu father (imposed on him by the provisions of the Negotiable Instruments Act) of paying to the holder-in-due-course the amount due under a promote executed by the father is a 'debt' on which a right

Note 12.

⁷ 23 Bom. 454 ; *Dwarkadas v. Kishendas*, 1933 All. 587 : 55 All. 675 ; *Narasingasetty v. Viswanathiah*, 43 Mysore 661 : 17 Mys. L.J. 47 ; *Puttaswamachar v. Ramachandrappa*, 17 Mysore 1 F.B. ; *Nanjappa v. Ramanna*, 17 Mysore 64 ; *Chikka Naika v. Ranganna*, 21 Mysore 212.

Contra.—*Lakshmi Sahayada Bank v. Gopali*, 8 Mysore 243 [can be regarded as overruled in 17 Mysore 1 F.B.].

⁸ *Bai Mani v. Usufali*, 1931 Bom. 229.

Note 13.

¹ *Sitaram v. Harihar*, 35 Bom. 169.

² *Garuda v. Murthenna*, 48 I.C. 740.

³ *Hariappa v. D. C. Shimoga*, 32 Mysore 307 : 5 Mys. L.J. 173 ; *Rama Iyengar v. Secretary of State*, 41 I.C. 105 ; *Hemraj v. Khemchand*, 1938 All. 601 [decree for damages for loss caused by dishonest conduct].

⁴ *Anniah Swamy v. Chick Era*, 42 Mysore 76 : 15 Mys. L.J. 105.

could be established in favour of the creditor in a court of justice and hence is not an avyavaharika debt.⁵ It was so held in *Narasinga Setty v. Viswanathiya*⁵ where the court found that the father who had executed the pronote had paid off the amount before the pronote was assigned over by the payee in favour of the holder-in-due-course. The fact that the father's negligence in not taking back the pronote from the payee was largely responsible for the liability to the holder-in-due-course does not save the son's liability under Hindu Law. As the learned Chief Justice observed, it is not necessary that a debt to which this rule is to apply must arise from a transaction out of which the father has got something.⁵

Where money is obtained by a father by committing a criminal offence and a decree is passed against him for the money so obtained, the sons are not liable for such a debt of the father.⁶ Where the father becomes liable to a subscriber of a chit fund of which he is the stake-holder, the father's liability is an Avyavaharika one.⁷ So also is a liability of the father for money taken by him and misappropriated under circumstances which constitute the taking itself a criminal offence.⁸ But where he lawfully receives money the fact that he misappropriates it later will not change the character of the debt and the son will be liable for such a debt,⁹ because a civil liability immediately arises when a person receives money on behalf of another and the fact that he fails in his duty to pay it over to the

Note 13.

⁵ *Narasinga Setty v. Viswanathiya*, 43 Mysore 661 : 17 Mys. L.J. 47.

⁶ *Pareman Das v. Bhattu*, 24 Cal. 672.

⁷ *Sesha Iyer v. Krishna Iyer*, 1936 Mad. 225 F.B. [chit fund is a lottery] ; *Muniandia v. Muthuswamy*, (1939) Mad. 70.

⁸ *Jagannath v. Jugal Kishore*, 48 All. 9 ; *Bai Mani v. Usufali*, 1931 Bom. 229 [misappropriation by guardian of ward's money] ; *Vidyavati v. Jai Dayal*, 1932 Lah. 541 [criminal breach of trust].

⁹ *Toshanpal v. District Judge of Agra*, 1934 P.C. 238 : 56 All. 548 ; *Ananda Rao v. President, Co-operative Credit Society*, (1940) 2 M.L.J. 179.

persons entitled to it does not alter the civil character of the debt. 'It is certainly not a crime or anything akin to it for the father to raise money for his personal needs by selling family property' nor is it in the nature of a breach of trust and if such a sale is set aside so far as the shares of the sons are concerned, the father's liability to refund the proportionate part of the purchase money is a debt which the sons are under a pious liability to repay.¹⁰

A decree for damages against the father on account of injury caused to crops is one for which his sons are liable.¹¹ So also is a father's debt for mesne-profits.¹² But sons are not liable for a decree passed against the father for damages for malicious prosecution.¹³ Money borrowed by the father for assisting the prosecution of a person accused of murder of a member of the family is not one which is illegal or immoral.¹⁴

Commercial debts.—Though a Hindu father has no authority to impose upon a minor member the risk and liability of a new business started by him, a debt contracted by him for a new business is not one which is illegal or immoral in nature and hence the sons are liable for such a debt by reason of pious obligation.¹⁵ It is the purpose for which the money is obtained that determines the character of the debt and so long as the object is not illegal or immoral, it is enough to give rise to the son's pious obligation.¹⁶

Note 13.

¹⁰ Krishnaswamy Iyengar, J., in *Lingayya v. Punneya*, 1942 Mad. 183 F.B.

¹¹ *Chakauri v. Ganga*, 39 Cal. 862; *Chandrika v. Narain*, 46 All. 617.

¹² *Peary Lal v. Chandai Charn*, (1906) 11 C.W.N. 163; *Ramasubramania v. Sivakami Ammal*, 1925 Mad. 841.

¹³ *Sundarlal v. Raghunandan*, 1924 Pat. 465; *Raghunandan v. Badri Teli*, 1938 All. 263; (1938) All. 330.

¹⁴ *Marudappan v. Nirai Kulathan*, 1937 Mad. 434.

¹⁵ *Bank of Mysore, v. Veerappa*, 45 Mysore 26; 18 Mys. L.J. 113, 131; *Annabhat v. Shivappa*, 1928 Bom. 232; *Achutaramayya v. Ratnajee*, 49 Mad. 211; *Venkateswara Rao v. Ammayya*, 1939 Mad. 561.

¹⁶ *Lingayya v. Punneya*, 1942 Mad. 183; (1942) 1 M.L.J. 57, 66 F.B.; *Chatkao Singh v. Hasan*, 1929 Oudh 458.

14. *Time-barred debt*.—Under pure Hindu Law a Hindu was bound to pay a debt owing by him and no rule of limitation for recovery of debts was recognised. If he died without paying the debts his sons were under a moral and religious obligation to discharge those debts. But since the introduction of the Statute of Limitation, a Hindu is not bound to pay a time-barred debt and his sons are also under no pious obligation to pay such time-barred debts of the father.¹ But where the father passes a fresh note for the time-barred debt validly under Sec. 25 (3) Contract Act, it may be enforced against him and after his death against his sons by reason of their pious obligation. A promissory note for a time-barred debt is not a promise without consideration and is not an *avyavaharika* debt.²

15. *Burden of proving immorality of debt*.—Where in execution of a decree against the father for his personal debt the interests of the sons in the coparcenary property are sought to be proceeded against or where the father's creditor sues the sons after the father's death, the burden of proving that the father's debt is tainted with immorality and that therefore they are not under any pious obligation to discharge it lies on the sons who allege it.¹ The burden is on the sons to prove the immoral nature of the debt even in a case where they seek on that ground to recover their shares in property already sold in execution of a decree

Note 14.

¹ *Subramania v. Gopala*, 33 Mad. 308 ; *Gajadhar v. Jagannath*, 1924 All. 551 F.B. ; *Achutanand v. Suraj Narain*, 1926 Pat. 427.

² 1924 All. 551 F.B. ; *Parmanand v. Gur Prasad*, 1935 Oudh 500 ; see also *Basalingappa v. Guvushantappa*, 16 Mys. L.R. 38 [fresh promise by manager].

Note 15.

¹ *Yellappa v. Ramkrishna*, 3 Mys. L.R. 132 ; *Krishnappaji v. Devappaji*, 3 Mys. L.R. 159 ; *Ramachandriah v. Bhaskaria*, 5 Mys. L.R. 157 ; *Ramachetty v. Kapoor Chand*, 32 Mysore 175 : 5 Mys. L.J. 46 ; *Girdhari Lal v. Kantoolal*, 14 Beng. L.R. 187 P.C. ; *Balwant Singh v. Clancey*, 34 All. 296 P.C. ; *Raj Kishore v. Madan Gopal*, 1932 Lah. 636.

against the father for his personal debt.² Thus where an adopted son sued for recovery of his half share in a house sold in execution of a decree against the father, it was held that the suit itself was not maintainable as there was no allegation in the plaint that the debt for which the decree was obtained was tainted with immorality or illegality.³

The burden which lies on the sons is not discharged by showing that the father generally lived an extravagant or immoral life. A clear connection between the immorality of the father and the debt contracted must be established.⁴ However, where it is shown that the borrower (deceased father) before incurring the debt had cut himself off entirely from his family and was not maintaining the family or performing any of the duties incumbent on a Hindu householder in respect of his family, the burden will be upon the creditor to prove that the debt of which he seeks repayment was not contracted for an illegal or immoral purpose.⁵

16. *Creditors' suits: suit against father.*—Where a father has contracted a debt for his personal benefit, the creditor can sue him and execute the decree he obtains by attachment and sale of his interest in the family properties. He cannot in execution of that decree proceed against the interests of the sons in the properties in the lifetime of the father because the son's pious liability does not exist as long as the father is alive. If the father dies before the decree is fully satisfied the creditor can thereafter execute

Note 15.

² *Subbannachar v. Kempa Chowda Chetty*, 4 Mys. L.R. 210 ; *Venkatasappa v. Venkata Krishna*, 6 Mys. L.R. 227 ; *Rama v. Subramanya Jois*, 5 Mysore 69.

³ 6 Mys. L.R. 227.

⁴ *Sat Narain v. Lala Raghubans*, 17 C.W.N. 124 : 17 I.C. 729 P.C. ; *Shyam Narain v. Suri Narain*, 35 Bom. L.R. 301 P.C. ; *Tulshi Ram v. Bishnath*, 1927 All. 735 : 50 All. 1 ; *Johan Singh v. Hardat Singh*, 1935 All. 247 : 57 All. 357 ; *Brij Mohan v. Mahabir*, 63 Cal. 194 ; *Gavirangappa v. Nagappa*, 7 Mys. L.J. 58.

⁵ *Venkatramabhatta v. Kapinappa*, 22 Mysore 153.

the decree against the interests of the undivided sons in the properties, without the necessity to bring a separate suit against them.¹ If the sons raise any contention as to the *factum* of the debt or that the debt is illegal or immoral, it may be decided in the execution proceedings alone and not in a separate suit.²

If there is a partition of the family after the decree against the father, the decree cannot be executed even after the death of the father against the property which has fallen to the shares of the sons in the partition because it is only the undivided sons that are under a pious obligation.³ A partition of the family pending the creditors' suit or after the decree therein cannot by reason only of that be held to amount to a fraud on the creditors.⁴

Suit against father and son.—A creditor of the father cannot sue the father and the son together for the father's private debts, because in Mysore the son is not liable for that debt during the father's lifetime,⁵ except where the father is so disabled by disease or other physical disability as not to be able to discharge it himself. Nor can the son alone be sued during the father's lifetime.⁶

Suit against the son.—The creditor may however sue the sons after the father's death for his (father's) debt not

Note 16.

¹ *Chikkanaika v. Ranganna*, 21 Mysore 212; *Suryanarayana Setty v. Veenay Subbaraya*, 10 Mys. L.J. 8; see also Sec. 53, *Civil Procedure Code*.

² 10 Mys. L.J. 8; *Rama Chetty v. Kapoor Chand*, 32 Mysore 175; 5 Mys. L.J. 46; *Amar Chandra v. Sebak Chandra*, 34 Cal. 642 F.B.; *Narayan v. Sagunabai*, 49 Bom. 113.

³ *Subbiah v. Iyana*, 18 Mys. L.R. 286; *Talkad Rama Rao v. Thammanna*, 44 Mysore 357; 17 Mys. L.J. 347.

⁴ 18 Mys. L.R. 286; *Baluswamy Iyer*, in re. 1928 Mad. 735 F.B. *Kishen Sarup v. Brij Raj*, 1929 All. 726; 51 All. 932, 936.

⁵ *Kala v. Javare Gowda*, 15 Mysore 233 F.B.; cf. *Ramaswamy v. Ulaga-natha*, 22 Mad. 49 F.B. [father and son can be sued together]; *Narayan v. Veerappa*, 40 Mad. 581 [do.]; *Debendra v. Fyzabad Bank*, 1924 Pat. 94 [do.].

⁶ Cf. *Periaswamy v. Seetharamiya*, 27 Mad. 243, 247 F.B. [same in British India also].

tainted with immorality even though no suit was filed against the father. The decree obtained against the son may be executed against both the share of the father and the sons in the family properties.⁷

17. *Sale of family property in execution of decree against father alone.*—A creditor who has obtained a decree against the father for his personal debt not incurred for an illegal or immoral purpose, cannot, in execution thereof in the lifetime of the father, attach and sell the interest of the sons in the coparcenary property. If he gets them attached or sold the sons can successfully prefer a claim to the property on the ground that their interests are not liable during the lifetime of the father irrespective of the fact whether the debt is tainted or not with illegality or immorality. The sons are however not bound to proceed under O. 21, R. 58, C.P.C. They may bring a suit even after the property is sold, for a declaration that the decree and the sale do not bind their interests in the property.¹ In Mysore it cannot also be urged that the debt is one contracted to discharge an ‘antecedent’ debt of the father and that therefore the son’s interests are also bound.² This is the position so long as the father is alive. But once the father dies, the son’s pious duty comes in and alters matters. His interest will then be liable to be seized for the payment of the father’s just debts.³

18. *Mortgage decree against father.*—What is stated above applies equally to proceedings in execution of a mortgage decree against the father. Where the mortgage by the father is for legal necessity or benefit of the family, the mortgage will be binding on the interests of all the sons.

Note 16.

⁷ *Devidas v. Jada Ram*, 1933 Lah. 857; *Siddagowda v. Kodandarama Setty*, 11 Mysore 84.

Note 17.

¹ *Venkataramayya v. Anantharaman*, 14 Mys. L.J. 366, 368.

² See Note 9 above; 14 Mys. L.J. 366; *Thippanna v. Rudranna*, 16 Mys. L.J. 47.

³ 16 Mys. L.J. 47; *Kala v. Javare Gowda*, 15 Mysore 233 F.B.

But where the mortgage by the father is such as to bind only the father's interest, the mortgage as such is not operative on the son's interests, but if the father dies without discharging the mortgage debt, the sons will nevertheless be under a pious obligation to pay the mortgage debt *qua* debt provided that the mortgage debt was not incurred for an illegal or immoral purpose. If the amount due to the mortgagee is not realised by the sale of the father's interest alone (which is liable whether he is alive or dead), the balance still due would be a debt due from the father or after his death from his estate. In the latter event the doctrine of pious obligation of the sons would apply to the balance and it could be recovered from the son's interests in what had been the joint family properties by recourse to O. 34, R. 6, C.P.C., provided such personal remedy is not barred by any rule of limitation.¹ Thus, for instance, there can be no balance due from the father's estate after his death which the sons would be under a pious obligation to repay, if on the day of the creditor's suit itself the personal liability of the father under the mortgage deed was time-barred. So also where the mortgage by the father for his personal benefit is an usufructuary mortgage.

19. *Limitation for suits : Against father.*—For a suit against the father to recover a debt contracted by him for his personal benefit, the period of limitation is three years from the date when the debt becomes due and payable.

Against the son.—A son is not under a pious obligation to discharge time-barred debts of the father.¹ Nor does pious obligation arise until the death of the father. Hence in Mysore the son is liable for a personal debt of the father

Note 18.

¹ *Rudrappa Setty v. Rangoojee Rao*, 45 Mysore 83 : 18 Mys. L.J. 133 ; *Bank of Mysore v. Veerappa*, 45 Mysore 26 : 18 Mys. L.J. 113, 131 ; *Kandaswami v. Kuppu*, 43 Mad. 421.

Note 19.

¹ *Subramania v. Gopala*, 33 Mad. 308 ; *Achutanand v. Suraj Narain*, 1926 Pat. 427 : 5 Pat. 746.

only if at the time of his (father's) death the debt is not time-barred. The right to sue the son for his father's personal debt accrues on the date of the father's death and it is submitted that the residuary article Art. 120 governs the case. The Allahabad High Court has held that the son's liability is not governed by the same article as the father's liability but by Art. 120, the reason being that the son not being a party to the contract could not be sued on the contract but only by reason of the doctrine of pious obligation.²

Though there is a conflict as to the article applicable to a suit against the sons, the British Indian Courts are agreed that the starting point of limitation in respect of the liability both of the father and the son is the same namely the date on which the debt becomes due and payable.³ A Full Bench of the Calcutta High Court left open the question whether 'the right to sue' the son accrued on the date on which the father's debt becomes due and payable or on the date when the creditor after exhausting all his remedies against the father finds that the debt or a portion of it is still unsatisfied on the date of the death of the father.⁴

Where debt is secured by a charge.—Where the father has mortgaged the properties for his personal debt a suit against him is governed by Art. 132 which prescribes a period of 12 years from the date when the money becomes payable. In Mysore the son is not liable under such a mortgage and hence no suit can be filed against him on the mortgage (considered as an alienation) during or after the father's lifetime. But after the father's death if the personal liability under the mortgage is not barred against the father at the time of his death, the son can be sued within six years from that time.⁵

Note 19.

² *Narsingh v. Lalji*, 23 All. 206; *Chandraseo v. Mata Prasad*, 31 All. 176 F.B.; see also *Brij Nandan v. Bidya Prasad*, 42 Cal. 1068 F.B.

³ 23 All. 206 [6 years]; 42 Cal. 1068 F.B. [6 years]; *Periaswamy v. Seetharama*, 27 Mad. 243 F.B. [3 years].

⁴ 42 Cal. 1068 F.B.

⁵ See *Rudrappa Setty v. Rangoojee Rao*, 45 Mysore 83 : 18 Mys. L.J. 133.

CHAPTER IX

PARTITION

Section 7

(1) *Separation of interest by expression of intention.*—Where a member of a joint Hindu family not being a minor has, by conduct or by declaration, expressed clearly and unequivocally, and to the knowledge of the other members, his intention to separate himself from the family, he shall be deemed to have become divided in interest from such other members from the time of such expression of intention.

(2) *Separate share or interest to pass by succession in case of intestacy.*—The share or interest in joint family property of a member becoming divided in interest under Sub Sec. (1) shall, in the event of his dying intestate, pass by succession to his own heirs, male or female, even though no actual division of property may have been made.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Member of a joint Hindu family ; (3) What is partition ; (4) Persons entitled to a share ; (5) Minor coparceners ; (6) Son begotten before but born after partition ; (7) Son begotten as well as born after partition ; (8) Illegitimate sons ; (9) Disqualified coparceners ; (10) Certain females entitled to share at a partition ; (11) Restraint on partition ; (12) Property available for partition ; (13) Mode of taking accounts ; (14) Parties to a suit for partition ; (15) Unequivocal expression of intention to separate ; (16) Expression of intention to the knowledge of other members ; (17) Suit for partition by adult coparcener ; (18) Minor coparcener's suit for partition ; (19) Partition by agreement ; (20) Partition by arbitration ; (21) Cesser of commensality ; (22) Partial partition—Partial as to property ; (23) Suit for partial partition ; (24) Partial as to the persons separating ; (25) Partition decree ; (26) Second partition ; (27) Conversion and partition ; (28) Births and deaths pending suit for partition ; (29) Births and deaths of females pending suit for partition ; (30) Reopening partition ; (31) Sub Sec. (2) : Devolution of divided member's interest ; (32) Reunion ; (33) Intention necessary to reunite ; (34) Partition created by so-called will ; (35) Subject-matter in partition suit.

1. *Scope of the section.*—This section expresses in a clear and simple way the principle of Hindu Law that division of status of a joint family is brought about by the

unequivocal expression of intention of a member of the joint family (who is not a minor) to become separate, without the need for the concurrence of the other members. Sub Sec. (1) states when a member of a joint family can be deemed to have separated himself from the family, and Sub Sec. (2) expresses how the interest of a separated member devolves and also adopts the fundamental principle of partition in Hindu Law that partition in essence is the severance of the joint status, the actual division of the property by metes and bounds being of little consequence.

This section does not in other respects alter or amend the rules or incidents of the Hindu Law of Partition. Sec. 8 however gives certain females a right to share at a partition of joint family property, which they had not before the Act. In other respects however, the Act leaves the rules of Hindu Law of Partition unaffected.

2. *Member of a joint Hindu family.*—The use of these words in the section gives rise to a doubt as to whether women of the family are also entitled to demand and enforce a partition of the joint family of which they are members. ‘Member’ ordinarily includes not only the coparceners but also the women and children of the joint family. The doubt arises because the word ‘member’ is used in this section while the more specific word ‘coparcener’ is used in Sec. 8. The question was raised in *Venkatapathiah v. Saraswathamma*¹ where Reilly, C.J., observes: ‘We may perhaps imagine in these modern times that a woman of a joint family might wish to dissociate herself from all claims of the joint family on her society or services. On the other hand it is extremely unlikely that a woman of a joint family would willingly cut herself off from all right to maintenance from the joint family without material gain’. Before the Act a woman had no share in the property of the joint family of which she was a member, and under the Act a

Note 2.

¹ 43 Mysore 361 : 16 Mys. L.J. 273, 277.

woman is entitled to a share only when a partition of the joint family takes place and she is one of the relatives mentioned in Sec. 8. The result is that even if a woman should be entitled, under the words of this section, to separate herself from the family, it confers no share of the property on her, nor can she by doing so bring about a separation between the coparceners who wish to remain undivided.²

3. *What is partition.*—According to Hindu Law no individual member of an undivided family whilst it remains joint, can predicate of the family property that he has a certain definite share namely a third or a fourth.¹ His interest is a fluctuating one, enlarging by deaths and diminishing by births in the family. There is community of interest and unity of possession of the joint family property in all the coparceners.¹ But partition consists in defining the shares of the coparceners in the joint family property, and a division of the property by metes and bounds is a mere consequence. Once the shares are defined there is a severance of the joint status. The parties may then actually divide or they may continue to live together and enjoy the property as before. In either case it affects only the mode of enjoyment but not the tenure of the property. They cease to have community of interest or unity of possession in the property but hold it as tenants-in-common.³ Mere severance in food and worship does not operate as a separation of the joint family status.⁴

Note 2.

² *Ibid.*, p. 279.

Note 3.

¹ *Appovier v. Rama Subba Iyan*, 11 M.I.A. 75, 89 ; *Hiriniappa v. Raghavendrappa*, 5 Mys. L.R. 317 ; *Thimmia v. Bada Thimma*, 19 Mysore 67.

² *Katama Natchiar v. Raja of Sivaganga*, 9 M.I.A. 543.

³ *Devarajah Urs v. Devaraja Urs*, 7 Mys. L.R. 23 ; *Siudalingappa v. Nanjamma*, 7 Mys. L.R. 130 F.B.; 11 M.I.A. 75 ; *Harkishen Singh v. Partap Singh*, 1938 P.C. 189 ; *Mt. Anurago Kuar v. Darshan Raut*, 1938 P.C. 65 : 172 I.C. 977.

⁴ *Ganesh Dutt v. Jewach*, 31 Cal. 262 P.C. ; *I. T. Commr. v. Krishna Kishore*, 1941 P.C. 120.

4. *Persons entitled to a share.*—Every coparcener is entitled to a share upon partition.¹ Every adult coparcener is also entitled to demand and to sue for partition at any time.² The coparcener's right to a partition is coextensive with his right to the property in the paternal or ancestral estate acquired by birth.³

5. *Minor coparceners.*—A minor coparcener has no unqualified right to enforce a partition. In a suit on behalf of a minor for partition, the division of status of the family does not occur until a preliminary decree for partition is made.¹ The court will in its discretion grant or refuse partition.² Where the court determines that partition will be for the benefit of the minor, the court will grant a preliminary decree for partition, and division of status in the family occurs as on that day.³ Though a minor cannot, when resisted, enforce a partition as of right in a suit brought for the purpose on his behalf, a guardian of the minor can arrange for a partition on his behalf out of court, and it will be binding on the minor so long as it is not unfair or prejudicial to his interests.⁴

Note 4.

¹ *Sartaj Kuari v. Deoraj Kuari*, 10 All. 272 P.C.

² *Meenakshiammal v. Ramaswamy Iyer*, 33 Mysore 425 : 6 Mys. L.J. 201 ; *Rameshwar v. Latchmi*, 31 Cal. 111 ; *Subba v. Ganesha*, 18 Mad. 179, 183 ; but see *Appaji v. Ramachandra*, 16 Bom. 29 F.B. [grandson not entitled to demand a partition if his father is joint with his own father, brothers or uncles] ; the conflict of decisions is due to different readings of Mitakshara, chap. I, Sec. 5, verse 3.

³ 10 All. 272, 287 P.C.

Note 5.

¹ *Rajagopalachar v. Achamma*, 28 Mysore 257 : 1 Mys. L.J. 149 ; *Krishnalal v. Nandeswar*, 44 I.C. 146 [Mere institution of suit effects severance].

² *Kenchayya v. Subbiah*, 42 Mysore 268 : 15 Mys. L.J. 43 ; *Thangan v. Subba*, 12 Mad. 401 ; *Bhola Nath v. Ghasi Ram*, 29 All. 373.

³ 28 Mysore 257 ; *Sonnakka v. Subbarayappa*, 27 Mysore 42 ; *Narasamma v. Akkayamma*, 16 Mys. L.J. 406 ; *Sanathkumar v. Veerendrakumariah*, 43 Mysore 534 : 16 Mys. L.J. 521 ; but see *Sri Ranga v. Srinivasa*, 50 Mad. 866 [From date of suit and not from date of preliminary decree] ; *Atul Krishna Roy v. Lala Nandanji*, 1935 Pat. 275 F.B. [do.] ; *Ram Singh v. Fakira*, (1939) Bom. 256 [do.].

⁴ 28 Mysore 257.

6. *Son begotten before but born after partition.*—A son in the womb is treated in Hindu Law as having an interest in a partition of family property made while he is in the womb and before he is born. He is treated as if he is in existence at the time of partition and is entitled to a share. If no share is reserved for him, he is entitled to have the partition reopened and a share allotted to him.¹ As to a daughter's right while in the womb, see Note 29, below.

7. *Son begotten as well as born after partition.*—Where the father separating from his sons has reserved a share for himself, a son who is begotten and born after the partition is not entitled to have the partition reopened. But he will be entitled on his father's death to inherit not only the share the father has reserved for himself, but also all his father's separate property, to the exclusion of the divided sons, if he continues joint with his father till his death.¹ But where the father has not reserved a share for himself, the son begotten and born after partition can have it reopened and get a share allotted to him.²

8. *Illegitimate Sons.*—The illegitimate sons of the three regenerate classes are not entitled to any share on partition.¹ But the illegitimate sons of a Sudra by a Dasi, that is, a concubine in his continuous and exclusive keeping, are however entitled to rights of inheritance and partition.² They are called Dasiputras. The illegitimate son of a Sudra does not acquire by birth any interest in his father's estate. He

Note 6.

¹ *Chikkanarasappa v. Honnuramma*, 43 Mysore 181 : 16 Mys. L.J. 167, 173 ; *Hanmant v. Bheemacharya*, 12 Bom. 105.

Note 7.

¹ *Kalidas v. Krishen*, (1869) 2 Beng. L.R. 103 F.B. ; *Nawal Singh v. Bhagwan Singh*, 4 All. 427 ; *Ganesh Prasad v. Hazari Lal*, 1942 All. 201 F.B.

² *Chengamma v. Muniswami*, 20 Mad. 75.

Note 8.

¹ See *Mitakshara*, Chap. I, Sec. 12, para 3.

² See *Mit.*, Chap. I, Sec. 12, para 2 ; *Kempa Nanje Gowda v. Siddamma*, 2 Mys. L.R. 190 ; *Sivarama Gowda v. Lingamma*, 3 Mysore 65.

cannot therefore enforce a partition against his father in his lifetime.³ But after the father's death he can enforce a partition against the legitimate sons of his father.⁴ If the father was joint at his death with his collaterals, *e.g.*, his brothers or their sons or his uncles, etc., the illegitimate son is not entitled to demand a partition of the family property, but he is entitled only to maintenance out of such property provided his father left no separate estate.⁵

9. *Disqualified coparceners*.—Persons who by Hindu Law are disqualified by physical infirmity from inheriting are also disentitled to a share on partition. Blindness which is not congenital is no disqualification to receive a share on partition or to inherit property.¹ Similarly deafness and dumbness or want of any limb or organ which are non-congenital are not disqualifications.² It cannot be said that the deaf, the dumb or the blind are incapable of managing their own affairs with prudence. Where the evidence showed that a person was lame of one leg and nevertheless able to walk, but not congenitally lame or a helpless cripple (*nirindriya*), it was held that at this stage of advancement of society the absence or deprivation of an organ not essential for intelligent existence should not be a ground of exclusion from participation in the joint family property.³

Insanity will exclude a person from inheritance or a share on partition even if it is not congenital or incurable.

Note 8.

³ *Jogendra v. Nityanund*, 18 Cal. 151 P.C. ; *Siddamma v. Kullamma*, 7 Mysore 13.

⁴ *Kamalammal v. Viswanathaswamy*, 46 Mad. 167 P.C.

⁵ *Sadu v. Baiza*, 4 Bom. 37 F.B. ; *Gopalaswamy v. Arunachellam*, 27 Mad. 32 ; *Velliappa Chetty v. Natarajan*, 1931 P.C. 294 : 55 Mad. 1.

Note 9.

¹ *Poota Linganna v. Mundi Marianna*, 4 Mys. L.R. 262 ; *Guneswar v. Durga Prasad*, 45 Cal. 17, 24 P.C.

² *Savitri Bai v. Bhabat*, 51 Bom. 50 ; *Venkata v. Purushottam*, 26 Mad. 133 ; *Anukul Chandra v. Surendra*, (1939) 1 Cal. 592 ; *Mara v. Bettaswamy Gowda*, 46 Mysore 706 : 19 Mys. L.J. 455.

³ *Narasimhasastri v. Nanjunda Sastri*, 22 Mysore 256.

It is enough if it exists at the time the inheritance opens or the partition takes place.⁴

Idiocy which of course is congenital, if it is complete and absolute⁵ and leprosy of a virulent type which is incurable, even if non-congenital⁶ are also disqualifications.

Act V of 1938 : Hindu Inheritance (Removal of Disabilities) Act, 1938.—Under this Act, notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by the Hindu Law shall be excluded from inheritance or from any right or share in joint family property by reason only of disease, deformity or physical or mental defect, other than a person who is and has been from birth a lunatic or idiot. Thus the position now is that congenital lunacy and congenital idiocy are the only defects which disqualify a coparcener from a share on partition or inheritance.

Subsequent removal of disability.—Where the disability is removed subsequent to the date of partition or the opening of the inheritance, the right to share or to inherit revives. The effect of lunacy is to suspend and not to extinguish the right. Hence if the others take the share due to a lunatic they are under an obligation to return it to him if the disqualification is subsequently removed.⁷ The principle of Hindu Law that property once vested cannot be divested, does not apply to such a case.⁷ On removal of the disability the coparcener has the same rights as a son born after

Note 9.

⁴ *Krishnamachar v. S. Raghavachar*, 17 Mysore 25; *Muthuswami v. Meenammal*, 43 Mad. 464; *Bapuji v. Dattu*, 47 Bom. 707; *Ram Singh v. Bhani*, 38 All. 117.

⁵ *Ram Bijai v. Jagat Pal*, 18 Cal. 111 P.C.

⁶ *Karali v. Ashutosh*, 50 Cal. 604; *Ramabai v. Harnabai*, 1924 P.C. 125 : 48 Bom. 363.

⁷ 17 Mysore 25; *Krishna v. Sami* 9 Mad. 64 F.B.; *Amrith ammal v. Vallimayilammal*, (1942) 2 M.L.J. 292 F.B.; *Contra.—Bapuji v. Pandurang*, 6 Bom. 616; *Powadewa v. Venkatesh*, 32 Bom. 455; *Deo Kishen v. Budh Prakash*, 5 All. 509 F.B.

partition and is entitled to reopen the partition.⁸ A congenital idiot has the status of a coparcener notwithstanding that he is excluded from the enjoyment of his share during the period of his disqualification, and he can lawfully marry and transmit a right of enjoyment of the family properties to his issue.⁹

10. *Certain females entitled to share at a partition.*—According to Sec. 8 (1) (a), at a partition between a person and his son or sons, his mother, his unmarried daughters, and widows and unmarried daughters of his predeceased undivided sons and brothers who have left no male issue are entitled to shares. Similarly clauses (b) and (c) of the section also declare certain females entitled to shares at a partition between other coparceners, and Sec. 8 (2) says how their shares shall be fixed. These females are entitled to have their shares separated off and placed in their possession as provided by Sec. 8 (5). But none of these females is entitled to demand or sue for a partition.¹ In Southern India the practice of allotting shares upon partition to females had become obsolete,² but the Act recognises their right to shares at a partition.

11. *Restraint on partition.*—Partition of joint family property like any other disposition, is a transfer of property and as such must conform to the rules of transfer of property *inter vivos*.¹ Thus a condition in a partition or settlement deed that property falling to the share of one of the members should be absolutely inalienable is a restraint on alienation offending against Sec. 10, T.P. Act, and hence is

Note 9.

⁸ *Mitakshara*, Chap. II, Sec. 10, paras 6 and 7.

⁹ (1942) 2 M.L.J. 292 F.B. But see Article on 'Coparcenership of Disqualified Son under the Mitakshara', (1942) 2 M.L.J. 63.

Note 10.

¹ *Venkatapathiah v. Saraswathamma*, 43 Mysore 361 : 16 Mys. L.J. 273.

² *Subramanyam v. Arunachellam*, 28 Mad. 1, 8.

Note 11.

¹ Nageswara Iyer, J., in *Chennananjappa v. Khaleel*, 43 Mysore 376 : 16 Mys. L.J. 476: But see *Sankaralingam v. Veluchami*, (1942) 2 M.L.J. 678 F.B.

void and not binding on the parties thereto.² But where on a settlement of conflicting claims in a family, one of the terms of the arrangement arrived at was a prohibition of sales to strangers to the family, their Lordships of the Privy Council held that it was only a partial restriction upon the power of disposition and was not inconsistent with Sec. 10 T.P. Act.³ This view is adopted in Mysore also.⁴

A direction in a will prohibiting a partition or postponing it for an indefinite period is invalid.⁵ A compromise followed by a decree that certain properties should be divided and certain others should be kept joint for ever was held not binding even on the parties thereto, so that any party notwithstanding such agreement may sue for a partition.⁶ The contrary view is taken in Calcutta.⁷

12. *Property available for partition.*—It is only the property in which all the coparceners have community of interest and unity of possession that can be the subject of partition. Hence separate property of any coparcener cannot be available for division among the coparceners. Coparcenary property alone is liable to partition. Family idols and places of worship are not divisible. They may be held by the members by turns.¹

To determine the assets available for partition, provision must first be made out of the family properties for

Note 11.

² *Waman Ramkrishna v. Ganpat*, 1936 Bom. 10 ; *Sadhuram v. Prithi Singh & Co.*, 1936 Lah. 220 ; *Herianna Bhatt v. Oojani Maralia*, 2 Mys. L.R. 133 ; 16 Mys. L.J. 476.

³ *Mahomed Raza v. Md. Abbas Bandi*, 1932 P.C. 158.

⁴ *Boriah v. Hanumanthappa*, 14 Mys. I. J. 21.

⁵ *Rai Kishori v. Debendranath*, 15 Cal. 409 P.C. ; *Poorendra Nath v. Hemangini*, 36 Cal. 75, 77 ; *Venkatamma v. Doddanarasamma*, 14 Mysore 50.

⁶ *Ramalinga v. Virupakshi*, 7 Bom. 538 ; *Armuga Chetty v. Ranganatham Chetty*, 1933 Mad. 847 ; 57 Mad. 405.

⁷ *Jyotish Chandra v. Radhika Chandra*, 60 Cal. 1078 ; 149 I.C. 150.

Note 12.

¹ *Damodaradas v. Uttamram*, 17 Bom. 271 ; *Pramatha Nath v. Pradyumna Kumar*, 1925 P.C. 139 ; 52 Cal. 809.

payment of the joint family debts and the personal debts of the father not tainted with immorality,² maintenance of the female members and of disqualified heirs³ and for the marriage expenses of unmarried daughters.⁴ Where partition has to take place between the sons, provision must also be made for the funeral ceremonies of their mother.⁵

While the family is still joint, the family property is liable for the legitimate marriage expenses of male members and the daughters of male members of the family.⁶ But a coparcener who is unmarried at the time of partition is not entitled to have a separate provision made for his marriage expenses apart from the share he is allotted.⁷ Provision should be made on partition for the expenses of the thread ceremony of the members of the family.⁸

According to Sec. 8. (2) (c), the share which an unmarried daughter or sister is entitled to at a partition between the coparceners is inclusive of and not in addition to the legitimate expenses of her marriage including a reasonable dowry or marriage portion.

13. *Mode of taking accounts.*—A coparcener is not entitled to call upon the manager to account for his past dealings with the family property unless there is proof of misappropriation or fraud by the manager of the family

Note 12.

² *Venku Reddy v. Venku Reddy*, 1927 Mad. 471 : 50 Mad. 535.

³ *Krishnamachar v. S. Raghavachar*, 17 Mysore 25 ; *Narasamma v. Akkayamma*, 16 Mys. L.J. 406.

⁴ *Vaikuntam v. Kallabiran*, 23 Mad. 512 ; *Sampangiramiiah v. Subba Rao*, 42 Mysore 564 : 15 Mys. L.J. 529.

⁵ *Vaidyanatha v. Aiyaswamy*, 32 Mad. 191, 200 ; *Nanda Rani v. Krishna Sahai*, 1935 All. 698 : 57 All. 997.

⁶ *Gopal Krishna v. Venkatanarasa*, 37 Mad. 273 F.B. ; *Sundarabai v. Shivnarayana*, 32 Bom. 81 ; *Dehilal v. Nandakishore*, 1922 Pat. 22 : 65 I.C. 315 ; *Srinivasa v. Thiruvengadatha Iyengar*, 38 Mad. 556.

⁷ *Ramalinga v. Narayana*, 1922 P.C. 201 : 49 Mad. 489 ; *Venkatrayudu v. Sivaramakrishnayya*, 1934 Mad. 676 : 58 Mad. 126.

⁸ *Jairam v. Nathu*, 31 Bom. 54.

estate.¹ Otherwise he is entitled only to an account of the family property as it exists at the time of partition.² But subsequent to the date of institution of a suit for partition, the party in possession is bound to account for all receipts and expenses as have been incurred for the benefit or necessity of the estate and the net income after deducting such expenses is to be divided among the coparceners according to their shares.³ Where during the pendency of a partition suit one of the members paid some instalments due to Government in order to save the family properties which were put up for sale, and then filed a suit against the others for contribution, it was held that before a cause of action could at all arise in his favour and he could succeed in his suit for contribution, he had to specifically allege and prove that as a fact he was not in possession of any of the family properties and that he had to meet the debt from his own private funds, as otherwise if he is in possession of any of the family properties he is expected to pay and will be deemed to have paid out of the income of such properties, in which case he will be entitled to have the amount due to him adjusted when the shares are allotted.⁴

No charge will be made against the share of any coparcener, at the time of partition, because his family was larger and more family income was spent for their support,

Note 13.

¹ *Perrazu v. Subbarayudu*, 1922 P.C. 71 : 44 Mad. 656 ; *Sukhdeo v. Basdeo*, 1935 All. 594 : 57 All. 949 ; *Narain Rao v. Subba Rao*, 5 Mys. L.R. 225.

² *Honniah v. Eriah*, 37 Mysore 395 : 10 Mys. L.J. 129 ; *Balkrishna v. Muthuswamy*, 32 Mad. 271 ; *Parmeshwar v. Gobind*, 43 Cal. 459 ; *Benoy Krishna v. Amarendra*, 1940 Cal. 51 : (1940) 1 Cal. 183 [Manager accountable for what he actually got in and not for what he ought to have got in with greater skill and diligence].

³ 37 Mysore 395 ; *Sri Ranga v. Srinivasa*, 1927 Mad. 801 : 50 Mad. 865, 873.

⁴ *Krishnathathachariar v. Narasimhachar*, 34 Mysore 248 : 7 Mys. L.J. 327.

nor will any credit be given to any coparcener because a smaller share of the income was spent on him and his family.⁵

A coparcener is not entitled to demand mesne profits except where he was entirely excluded from the family properties,⁶ or where an arrangement has been made between the coparceners to enjoy the family property in distinct and specific shares and such enjoyment is disturbed.⁷ Where by negligence a member pays more than what was really due on behalf of the family, he is not entitled to credit for the excess amount so paid.⁸

14. *Parties to a suit for partition.*—The following persons are necessary parties to a suit for partition:—

- (i) all the coparceners and heads of families,
- (ii) females who are entitled to share at the partition,
- (iii) purchasers and mortgagees of the undivided interest of coparceners,¹
- (iv) females entitled to a provision for maintenance, marriage expenses, etc., are proper parties though not necessary.

A suit by a coparcener excluded from the enjoyment of coparcenery property, to enforce his right to a share in it, must be brought within 12 years from the date when he is so excluded to his knowledge.² Thus where it was proved that the plaintiff's branch had severed its connection with

Note 13.

⁵ *Abhya Chandra v. Pyari Mohan* (1870), 5 Beng. L.R. 347.

⁶ *Venkata v. Narayya*, 2 Mad. 128, 136 P.C.; *Venkata v. The Court of Wards*, 5 Mad. 236 P.C.; *Rajagopalachar v. Achamma*, 28 Mysore 257; 1 Mys. L.J. 149.

⁷ *Shankar v. Hardeo*, 16 Cal. 397 P.C.

⁸ *Yasobadra Nainar v. Samantha Badran*, 1936 Mad. 12 : 59 Mad. 154.

Note 14.

¹ *Sadu v. Ram*, 16 Bom. 608; *Duri v. Tadepatri*, 33 Mad. 246; *Giriappa v. Manjappa*, 8 Mysore 166.

² *Soshi v. Ganesh*, 29 Cal. 500; *Ganpat v. Annaji*, 23 Bom. 144; *Naranbhai v. Ranchod*, 26 Bom. 141; *Narasimhiah v. Subbarayappa*, 13 Mysore 31; Art. 127, Lim. Act, see Appendix V.

the defendant's branch for upwards of 40 years and that there was no community of interest between the two branches, it was held that it must be presumed that they were excluded from enjoyment of the joint family property and that therefore the suit for partition was barred by time.³ For exclusion by one coparcener of another, there must be not only an intention to keep the other out of possession, but also knowledge on the part of the other (excluded person) of such an intention by the first to exclude him from the joint family property.⁴ But mere non-participation by reason of absence from the place where the family property is situate or because the coparcener voluntarily resides separately from the family and does not ask to be maintained by the family, does not amount to exclusion from participation, nor is it by itself proof of such exclusion.⁵ Nor does a refusal to partition amount to exclusion where there is no denial of the right to partition.⁶

15. *Unequivocal expression of intention to separate.*—All that is necessary for the severance of joint status is a definite and unequivocal expression and communication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severalty. It is immaterial in such a case whether the other members assent or not.¹ An adult member may express that intention verbally or in writing or by acts or conduct.² The writing may be in different forms such as a deed, a letter,³ a notice, or a plaint filed in a court. Though the degrees of

Note 14.

³ 13 Mysore 31.

⁴ *Gurulingappa v. Dyaviah*, 11 Mys. L.J. 186.

Girigowda v. Thimmana, 16 Mysore 131; *Radhoba v. Aburao*, 1929 P.C. 231; 53 Bom. 609.

⁶ 1929 P.C. 231.

Note 15.

¹ *Girja Bai v. Sadashiv*, 43 Cal. 1021; 37 I.C. 321 P.C.

² *Dnyaneshwar v. Anant*, 1936 Bom. 290; 60 Bom. 736.

³ *Narayan Rao v. Purushotham Rao*, 1938 Mad. 390 [Severance takes place from date when letter was sent and not when it was received].

formality apparently range in the order given, there is no special virtue or strength attached to any of them.⁴ As often as not an oral declaration coupled with conduct may be more important than a writing, and a letter or writing more effective than a plaint. The surrounding circumstances may be looked into (1) to find out the intention when its expression happens to be not clear and (2) also, subject to the rules of evidence as to the burden of proof even when the intention is clear, to determine whether the declaration was deliberate and real or was only a sham or one made by the person when he was not a free agent and did not know his own mind at the moment of making it.⁵ Thus a mere defining of shares without an immediate intention to separate does not necessarily mean a division of status of the family.⁶ Similarly an oral request made by an elder brother at the time of his death, to his younger brother to give half the property to his (elder brother's) widow, does not amount to a severance of status.⁷ Coparceners who intend to remain joint cannot be considered divided contrary to their intention because for purposes of pretence they refer to their interest as represented by a fractional share. But where a third party has been induced to act upon the footing of such a representation, very different questions may arise by reason of estoppel or otherwise.⁸

Where a suit was filed by five plaintiffs of whom three were minors and the prayer so far as it related to partition was that the plaintiffs as a group might be divided from the rest of the joint family, but the suit was withdrawn before

Note 15.

⁴ *Meenakshiammal v. Ramaswamy Iyer*, 33 Mysore 425 : 6 Mys. L.J. 201, 233.

⁵ 6 Mys. L.J. 201, 234 ; *Ramanna v. Jagannatha Rao*, 1941 P.C. 48 : 195 I.C. 1 [No separation where the agreement is sham or a mere pretence].

⁶ *Ramabhadra v. Gopalaswamy*, 1931 Mad. 404 : 54 Mad. 269 ; *Poornanandachi v. Gopalaswamy*, 1936 P.C. 281 : 164 I.C. 26. ; *Chokalingan v. Muthukaruppa*, (1938) 2 M.L.J. 756.

⁷ *Shivappa v. Rudrava*, 57 Bom. 1 : 142 I.C. 164.

⁸ *Ramanna v. Jagannatha Rao*, 1941 P.C. 48, 51 : 195 I.C. 1.

the court had reached any conclusion on the question whether the partition would be for the benefit of the minor plaintiffs, it was held that the prayer for partition on behalf of the major plaintiffs too was not an unequivocal indication that they were determined to be divided from the rest of their joint family, but a prayer that they and their minor brothers as a group might be divided if the court thought that was for the benefit of the minors, and that they still remain undivided when the proceedings ended on the withdrawal of the suit.⁹

16. *Expression of intention to the knowledge of other members.*—To effect a division in interest, the clear and unequivocal expression of intention of an adult coparcener to separate must be made to the knowledge of the other members.¹ It is only from the time of ‘such expression of intention’ that he shall be deemed to have become divided in interest according to Sub Sec. (1). Two conditions have to be satisfied before a division of joint status can occur : (1) A clear and unequivocal expression of intention, by conduct or by declaration, to separate himself, and (2) the expression coming to the knowledge of the other members. Where either condition is not satisfied, it will not come within the words ‘such expression of intention’ in the section, and separation cannot be deemed to have taken place. Thus an unilateral declaration of intention behind the back of the other members, though clear and unequivocal, will not cause a division of status. It must also be to the knowledge of the other members. If it is so made, the assent or dissent of the other members will

Note 15.

⁹ *Ramegowda v. Chandregowda*, 41 Mysore 505 : 14 Mys. L.J. 185 ; see *Bachoo v. Mankorebai*, 31 Bom. 373 P.C. ; *Ganapathi v. Subramanyan*, 1929 Mad. 738 : 52 Mad. 845 [Though partition was found against minor coplaintiff's interest, it was held filing of suit operated as separation at any rate of the adult plaintiffs].

Note 16.

¹ *Girija Bai v. Sadashiv*, 43 Cal. 1031 P.C. ; *Mukund v. Ramkrishna*, 52 Bom. 8 P.C.

alter only the method of *de facto* division of the property and allotment of shares, and not the severance of status.¹ An intention to separate himself can be unmistakably expressed by a person even where the only other coparcener is a lunatic² or a minor. Whether the communication of the intention to the heads of the different branches is or is not enough for the purposes of the section is yet to be answered. Where a person wishes to separate from his brothers, notice to his brother's sons if any may not be very material, if the brothers are properly notified of his intention.

A letter or notice by an adult coparcener declaring his intention to separate which is not posted for any reason, or an unexpressed but keen desire to separate himself, cannot effect a division of status. Suppose a person expresses clearly and unequivocally his intention to separate and dies before it comes to the knowledge of the other members. Can he be deemed to have died divided in interest from the other members? The answer it is submitted should be in the negative, because he has not made 'such an expression of intention' which is deemed sufficient to effect a division of interest, unless the knowledge of the other members is also deemed to relate back to the moment when the intention is expressed.³ Thus if an adult coparcener makes a will, expresses in it his clear and unequivocal intention to separate himself, and disposes off his share in the family properties, but the other coparceners come to know of the will and its contents only after his death, the disposition cannot take effect. His declaration of intention to separate not having

Note 16.

² *Bhagwati Saran v. Parmeswari Nandan*, 1942 All. 267 (2): 1942 A.L.J. 197 [Acts and conduct indicated an unmistakable intention]; *Venkateswara v. Mankayammal*, 1935 Mad. 775 [Significance in the requirement as to notice discussed].

³ See *Narayan Rao v. Purshottam Rao*, 1938 Mad. 390 (Severance takes place from date when letter was sent and not when it was received); *Rama Iyer v. Meenakshi*, 1931 Mad. 278 [Severance from date of suit and not from the date of service of notice of suit].

been made to the knowledge of the other coparceners, as the section requires, in his lifetime, he cannot be deemed to have died as a divided member, with the result that the other coparcener's right to take the deceased's interest by survivorship will have accrued before the severance of status could take effect. Where a person sent the notice of his intention to separate, by registered post on the 3rd instant, disposed of his share by a will on the 4th and died on the 5th, but the letter which could have reached the other coparcener on the 4th was not delivered to him till the 9th, it was held that he died a divided member and the bequest was valid, though the other coparcener had not received the communication before the testator's death. However, it was observed by Varadachariar, J., that it was unnecessary in that case to say what the legal result would be in a case where the notice is posted in circumstances when it will be obviously impossible for it to reach the addressee before the testator's death.⁴

A mere defining of the shares without the animus or the intention to separate will also not amount to a division of status. Only the defining of shares with the intention of an immediate separation will have that result.⁵

17. *Suit for partition by adult coparcener.*—The institution of a suit for partition by an adult coparcener is an unequivocal intimation of his intention to separate, and consequently there is a severance of his joint status from the date of the suit itself.¹ The court has no alternative but to

Note 16.

⁴ 1938 Mad. 390, 392.

⁵ *Palani v. Muthuvenkatacherla*, 1925 P.C. 49 : 48 Mad. 254 ; *Rama-bhadra v. Gopalaswamy*, 54 Mad. 269 : 129 I.C. 801 ; *Poornanandachi v. Gopalaswami*, 1936 P.C. 281 : 164 I.C. 26 ; *Bhagwati Saran v. Parmeshwari Nandan*, 1942 All. 267 (2) ; *Meenakshi Ammal v. Ramaswamy Iyer*, 33 Mysore 425 : 6 Mys. L.J. 201.

Note 17.

¹ *Honniah v. Eriah*, 37 Mysore 395 : 10 Mys. L.J. 129 ; *Rama Iyer v. Meenakshi*, 1931 Mad. 278 [Not from the date of service of notice of suit].

give effect to the intention.² A decree may be necessary for working out the results of the severance and for allotting definite shares, but the severance of status however is brought about by the assertion of his right to separate on the date of the suit alone.³

But where the suit by the adult coparcener for partition is withdrawn before a decree is made in it, because he no longer wishes to be divided, it was held by the Privy Council that there is no severance of joint status.⁴ In Madras it is held that the position would however be different if the other coparceners of the family have accepted the intimation to sever.⁵ In Mysore, *Rama Rao and Satyaji Rao, JJ.*, after an elaborate discussion of the case law including the Privy Council decisions on the point, have not concurred with that view of the Privy Council.⁶ They observe that an intention if it stands alone without giving rise to any effect may of course be withdrawn. If however it automatically brings about a result, the withdrawal is too late, for the divided status will have already come into existence, and it is not possible to get back to the old position by mere revocation of the intention. There may of course be a subsequent agreement between the members to re-unite or circumstances from which such a reunion may be inferred. But that has to be proved as any other fact and not merely by evidence of withdrawal of the plaint.⁷ As the learned Judges observe, it is impossible to predicate the mement when a revocation may be expected and to fix any time limit for it, and in the meantime there may be births and

Note 17.

² *Siddalingappa v. Nanjamma*, 7 Mys. L.R. 130 ; *Meenakshi Ammal v. Ramaswamy Iyer*, 33 Mysore 495 : 6 Mys. L.J. 435.

³ *Girja Bai v. Sadashiv*, 43 Cal. 1031 P.C.

⁴ *Palani Ammal v. Muthuvenkatacherla*, 1925 P.C. 49 : 48 Mad. 254 ; *Kedar Nath v. Ratan Singh*, 7 I.C. 348 : 32 All. 415 P.C.

⁵ *Rama Rao v. Venkata*, 1937 Mad. 274.

⁶ See *Meenakshi Ammal v. Ramaswamy Iyer*, 33 Mysore 425 : 6 Mys. L.J. 201.

⁷ 33 Mysore 425 ; *Shagan Chand v. Data Ram*, 1927 All. 465 : 49 All. 664.

deaths in the family, and certain members may have on the faith of the division brought about by the filing of the suit or unequivocal expression of intention, openly or secretly dealt with their own shares and had transactions with strangers. They therefore conclude : ' If by reason of a notice or declaration a result follows or is expected to follow, it should be held binding, in the interest of both the parties as well as the outside public '.⁸ If the party wants to nullify the effect of his unequivocal expression of his intention and the consequent partition, it can only be done, in a way, by a re-union according to the known principles of Hindu Law.⁹ Recently in *Rame Gowda v. Chandre Gowda*,¹⁰ Reilly, C.J., expressed a doubt whether the learned Judges in *Meenakshi Ammal v. Ramaswamy Iyer*¹¹ intended to arrive at a definite decision to that effect.

18. *Minor coparcener's suit for partition*.—A mere unequivocal expression of intention by a minor coparcener to separate from the joint family does not effect a severance of joint status. Even a mere institution of a suit for partition on his behalf does not effect a separation. Division in status in such a case takes place only if the court finds in its discretion that the partition is beneficial to the interests of the minor and directs a preliminary decree for partition.¹ Division in status occurs as on that day, and does not relate back to the date of institution of the suit.² Consequently

Note 17.

⁸ 33 Mysore 425 : 6 Mys. L.J. 201, 233.

⁹ 33 Mysore 495 : 6 Mys. L.J. 435.

¹⁰ 41 Mysore 505 : 14 Mys. L.J. 185.

¹¹ 33 Mysore 425.

Note 18.

¹ *Sonnakka v. Subbarayappa*, 27 Mysore 42 ; *Rajagopalachar v. Achamma*, 28 Mysore 257 : 1 Mys. L.J. 149 ; *Kenchayya v. Subbayya*, 42 Mysore 268 : 15 Mys. L.J. 43 ; *Nathu Singh v. Anand Rao*, 1940 Nag. 185 : 186 I.C. 688.

² 28 Mysore 257.

Contra.—*Krishnaswamy v. Pulakaruppa*, 48 Mad. 465 [Not from date of preliminary decree, but from date of suit] ; *Atul Krishna v. Lala Nandanji*, 1935 Pat. 275 : 157 I.C. 53 F.B. [do.] ; *Ram Singh v. Fakira* (1939), Bom. 256.

where the minor dies before the court exercises its discretion to grant a preliminary decree for partition, the suit for partition abates, and any right the minor plaintiff may have had will pass by survivorship to the other coparceners of the family.³ Where a suit for partition on behalf of two minors was brought by their maternal grandfather for their share, it was held that the two minors speaking through their next friend did not intend to separate from each other.⁴ See also Note 5 above.

19. *Partition by agreement*.—Intention being the real test, it follows that an agreement among coparceners to hold and enjoy the property in defined shares as separate owners operates as a partition although there may have been no actual division of the property by metes and bounds.¹ In such a case the interest is divided though the property remains undivided.

The existence of minor coparceners is no bar to a partition by agreement or by arbitration. The minor may be properly represented by another major member of the family and no guardian need be appointed for him under the rules relating to minors.² Where a family arrangement of partition is entered into by the several members and carried out with all formality and perfect good faith, the court will refuse to set aside such a family arrangement.³ If the arrangement is unfair to the minor, he may on attaining

Note 18.

³ 28 Mysore 257 ; *Kolla Narasimhasetty v. Nanjamma*, 45 Mysore 460 : 18 Mys. L.J. 461, 465.

Contra.—*Rangaswamy v. Nagaratnamma*, 1933 Mad. 890 : 57 Mad. 95 F.B. [L.R. of the minor can continue the suit].

⁴ *Mallikarjuna Rao v. Official Receiver*, 1942 Mad. 422 : (1942) 1 M.L.J. 222.

Note 19.

¹ *Appovier v. Rama Subba Aiyar*, (1866) 11 M.I.A. 75 ; *Siddalingappa v. Nanjamma*, 7 Mys. L.R. 130 F.B. ; *Narasamma v. Chikkaranga*, 1 Mysore 75.

² *Mangiah v. Ranga Nanjundiah*, 7 Mysore 46 [Partition by arbitration] ; *Chik Nanjundappa v. Nanjappa* 11 Mysore 164.

³ *Veerappa v. Tippa Rudrappa*, 5 Mys. L.R. 325.

majority have it set aside in proper proceedings. He may also after attaining majority, enforce the arrangement by suit if it is favourable to him, and it will be no answer to the suit to say that he was not a party to the arrangement being a minor on the date of the arrangement.⁴ The existence of a valid and binding partition by the award of arbitrators appointed for the purpose is a bar to a suit for partition.⁵

A partition which is otherwise genuine, will sever the joint status even if the motive is to defeat the claims of creditors.⁶

20. *Partition by arbitration*.—An agreement between the members of a joint family whereby they appoint arbitrators for dividing the joint family property among them, amounts to a severance of the joint status of the family from the date of the agreement.¹ The fact that no award has been made is not evidence of the renunciation of the intention to separate, nor can the legal construction or legal effect of an unambiguous document defining shares of the members of the family be controlled or altered by evidence of the subsequent conduct of the parties.²

It is important to note that severance of status, that is, partition can take place without division of the property, by metes and bounds. The severance of the joint status is a matter of individual decision; the *de facto* division of the property, that is, the allotment of shares may be effected

Note 19.

⁴ *Balkrishnadas v. Ram Narain*, 30 Cal. 738 P.C. [agreement held to be fair]; *Awadh v. Sitaram*, 29 All. 37 [agreement enforced at suit of minor].

⁵ *Hutchiah v. Venkatiah*, 12 Mysore 22.

⁶ *Kuppan Chettiar v. Masa Goundan*, 1937 Mad. 424 : 169 I.C. 400.

Note 20.

¹ *Syed Kasim v. Jorawar Singh*, 1923 P.C. 353 : 50 Cal. 84; *Balmukund v. Mst. Sohano*, 1929 Pat. 164 : 8 Pat. 153 : 119 I.C. 817; *Siddalingappa v. Nanjamma*, 7 Mys. L.R. 130 F.B. [award by Panchayatdars]; *Hutchiah v. Venkatiah*, 12 Mysore 22.

² *Balkrishnadas v. Ramnarain*, 30 Cal. 738 P.C.; *Harkishen Singh v. Partap Singh*, 1938 P.C. 189 : 175 I.C. 332; *Chick Nanjundappa v. Nanjappa*, 11 Mysore 164.

by different methods, namely, by private agreement, by arbitrators appointed for the purpose by the parties, or in the last resort by the court.³

21. *Cesser of commensality*.—Cesser of commensality is not a conclusive proof of partition because a member may become separate in food and residence for the sake of convenience.¹ Whether the evidence in other respects supports or negatives the theory that the cesser is with a view to partition or not will have to be considered.² Thus where there has been no proof of partition, the mere fact that the members live in separate houses and cultivate separate portions of land is no conclusive proof of their divided status.³ The entry in the Record of Rights showing the share of each member of the family will be evidence of the severance of their joint status.⁴

22. *Partial partition—Partial as to property*.—It is open to the members of a joint family to sever their interest in respect of a part of the joint estate and remain joint with respect to the rest.¹ But where some properties are divided and the rest left undivided, if there is nothing to show that

Note 20.

³ *Girja Bai v. Sadashiv*, 43 Cal. 1031, 1049 P.C.

Note 21.

¹ *Anundee v. Khedo Lal*, (1872) 14 M.I.A. 312, 422; *Suraj Narain v. Iqbal Narain*, 35 All. 80 P.C.; *I.T. Commissioner v. Krishna Kishore*, 1941 P.C. 120 : 196 I.C. 707.

² *Garesh Dutt v. Jewach*, 31 Cal. 262 P.C.

³ *Sonatum v. Juggatsoondree*, (1859) 8 M.I.A. 66, 86; *Murari v. Mukund* 15 Bom. 201; *Sankar Naranappa v. Sooba Rao*, 1 Mysore 7; *Govendappa v. Govendappa*, 3 Mysore 10; *I.T. Commissioner v. Krishna Kishore*, 1941 P.C. 120 [separate residence].

⁴ *Ram Pershad v. Lakhpatri*, 30 Cal. 231 P.C.; *Nagesher v. Ganesha*, 56 I.C. 306 : 42 All. 368 P.C.; *Mst. Bhagwani v. Mohan Singh*, 1925 P.C. 132 : 88 I.C. 385; *Mst. Anurago Kuer v. Darshan Rant*, 1938 P.C. 65 : 172 I.C. 977.

Note 22.

¹ *Ramalinga v. Narayana*, 68 I.C. 451 : 45 Mad. 489 P.C.

they intended to hold it as joint tenants, the presumption would be that they hold it as tenants-in-common.²

Where a joint family owns properties within and outside Mysore, a suit for partition of properties in Mysore alone without including the properties outside the State is maintainable.³ In such a suit properties in the foreign jurisdiction cannot be taken into calculation in equalising the shares of the parties in respect of properties within Mysore.³

23. *Suit for partial partition*.—A suit for partial partition is not maintainable except under special circumstances.¹ Thus where a purchaser of a coparcener's share in one of the family properties at an involuntary sale brought a suit against the coparceners for partition of that property only, the prohibition against seeking partial partition was not enforced as the purchaser was neither interested nor quite in a favourable position to discover all the family properties.² Where both the parties to the suit are strangers to the joint family the alienee from one coparcener may, without bringing a general suit for the partition of the entire family properties, maintain a suit for partition of only the properties conveyed to him.³ The mere sale of a coparcener's undivided interest in a joint family property in private or in execution of a decree against

Note 22.

² *Devarajah Urs v. Devaraj Urs*, 7 Mys. L.R. 23 ; *Mala Gowda v. Gange Gowda*, 7 Mysore 23 ; *Beni Prasad v. Mst. Gurdevi*, 1923 Lah. 497 : 4 Lah. 252 ; *Martand v. Radhabai*, 1931 Bom. 97 : 54 Bom. 616.

³ *Srinivasayya v. Subbarayappa*, 4 Mys. L.J. 65.

Note 23.

¹ *Haridas v. Prannath*, 12 Cal. 566 ; *Ganpat v. Annaji*, 23 Bom. 144 ; *Kristayya v. Narasimham*, 23 Mad. 608 ; *Rangappa v. Narasimhasastry*, 3 Mysore 44 [Suit by purchaser from coparcener] ; *Kempa Reddy v. Venkata-swamy Reddy*, 15 Mysore 308 [where all the parties are members of the family—suit not permitted].

² *Lemaji Mylarappa v. Siddoji Rao*, 9 Mysore 43 [court auction sale].

³ *Subbaraju v. Venkataratnam*, 15 Mad. 234 ; *Iburamasa v. Thirumalai*, 34 Mad. 269 ; *Naranachar v. Dasappayya*, 27 Mysore 216.

him does not by itself constitute a partition of that member from the other members of the family.⁴

24. *Partial as to the persons separating*.—Where one coparcener separates from the others the question arises whether the latter are deemed to be joint or re-united or separate. This distinction is of consequence because the devolution of the estate of a Hindu is governed by different rules according as he was joint re-united or separate at the time of his death.

In *Kalamma v. Sidrama*¹ it was held that the separation of one coparcener of a Hindu family does not of itself affect the position of the other coparceners *inter se*. In *Channappa v. Anantarajiah*² it was held that in such a case the presumption until the contrary is proved is that there has been a complete partition as to the parties and as to the property. Later in *Kempalakkiah v. Lakshma Setty*³ Doreswamy Iyer, C.J., held after referring to the decisions of the Privy Council⁴ on the point, that, the separation of one member of a joint Hindu family does not give rise to a presumption of partition of the remaining members also, and that the question is one of intention and has to be proved as any other fact. In *Balkrishna v. Ramkrishna*⁵ their Lordships of the Privy Council reviewed their previous rulings and summarised the result as follows : ‘The general principle

Note 23.

⁴ *Lingappa v. Nanjappa*, 5 Mysore 86 ; *Gurulingappa v. Nandapa*, 21 Bom. 797, 803 ; *Lakshmanan Chettiar v. Srinivasiengar*, 1937 Mad. 131 : 166 I.C. 378 ; *Ramasubbaraya v. Narasimharaju*, 1940 Mad. 217 : 188 I.C. 700 [Alienation of coparcener's share does not itself constitute separation of family] ; see also observations of Miller, C.J., in *Lingappa v. Channabasappa*, 22 Mysore 293, 300.

Note 24.

¹ 16 Mysore 155.

² 18 Mysore 86.

³ 37 Mysore 263 : 10 Mys. L.J. 42.

⁴ *Balabux v. Rukmabai*, 30 Cal. 725 P.C. ; *Palani Ammal v. Muthuvenkatacherla*, 48 Mad. 254 P.C. ; *Balkrishna v. Ramkrishna*, 1931 P.C. 154 : 132 I.C. 613.

⁵ 1931 P.C. 154.

undoubtedly is that every Hindu family is joint unless the contrary is proved. If it is established that one member has separated, does the presumption continue with reference to the others? The decisions of this board show that it does not. [See *Balabux v. Rukmabai* and *Jatti v. Bunwarilal*.⁶] But it is equally clear on these decisions that the other members of the family may remain joint: It is, again, their Lordships think, a question of their intention which must no doubt be proved.’

Where there is a separation between members of a joint family, for example, between brothers, there is no presumption that there is a separation between one of them and his descendants also.⁷ Where a suit for partition on behalf of two minors was brought by their maternal grandfather for their share, it was held that the two minors speaking through their next friend did not intend to separate from each other.⁸

Where one member renounces all his interest in the joint family property in favour of the other coparceners, the latter continue joint as before. The case is different where the member receives his share and separates from the other members.⁹

25. *Partition decree*.—In a suit for partition, where a decree is passed, it is the decree alone which can be evidence of what was decreed.¹ It is the decree alone that is the evidence to show whether the separation was only of the plaintiff from his coparceners or was a separation of all the members of the joint family from each other. But

Note 24.

⁶ 1923 P.C. 136 : 74 I.C. 462.

⁷ *Hari Baksh v. Babulal*, 1924 P.C. 126 : 83 I.C. 418 ; *Konar v. Konar*, 1940 Rang. 149 ; *Tekchand v. Righumal*, 1940 Sind 138 : 190 I.C. 271.

⁸ *Mallikarjuna Rao v. Official Receiver*, 1942 Mad. 422.

⁹ *Parsotamdas v. Jagannatha*, 41 All. 361 ; *Venkatapathi Raju v. Venkatanarasimha Raju*, 1936 P.C. 264 : 164 I.C. 1.

Note 25.

¹ *Palani Ammal v. Muthuvenkatacherla*, 1925 P.C. 49 : 48 Mad. 254.

as a decree is not always a necessary condition of separation of interest, Sir George Rankin observed in *Ram Narain Sahu v. Mt. Makhna*² that the proposition that in a suit for partition by one member if the decree does not contain something to sever the estate, title and interest of the other members *inter se* they must be conclusively taken to have remained united, is by no means axiomatic. It was also held in that case, that in a partition suit if a member declares in the most solemn and explicit manner after the preliminary and before the final decree his intention to become separate in estate and interest, it cannot be held that because he did not get an allotment in severalty by the final decree he remains joint in status. The gap between the preliminary and final decrees is not seldom of considerable duration and the ordinary right of a coparcener to effect a separation of his estate, interest or title—as distinct from a partition by metes and bounds—by a proper declaration of his desire to sever, is not abrogated by the mere fact that he has not claimed to exercise it prior to the preliminary decree.³ A partition suit in which a preliminary decree has been passed is still a pending suit and the rights of parties who are added thereafter have to be adjusted at the time of final decree.⁴

26. *Second partition.*—In a joint Hindu family comprising several branches, if a member of one branch alone separates from the coparcenary taking away his share at a partition effected for the purpose while all the other members continue to live in jointness as before, then at a subsequent partition among all the branches should deduction be made for the share withdrawn by the one member in the earlier partition in the share to be allotted to his branch or should the subsequent partition be enforced in accordance with the condition of the family as it exists on that

Note 25.

² 1939 P.C. 174, 177 : 181 I.C. 929.

³ *Ibid.*

⁴ *Jadunath v. Parmeswar*, 1940 P.C. 11 : 185 I.C. 234.

date as if it were the first partition? This question was considered by a Full Bench in *Sadashiv Rao Sahujee v. Subba Rao Sahujee*¹ and it was decided, agreeing with the Madras² view based on the authority of *Smritichandrika*, that deduction should be given for the share withdrawn by one member in the earlier partition in the share to be allotted to that branch at the second partition. The rule that partition should be made according to the condition of the family as on the date of the partition has no application to cases of partial partitions among the branches.³

27. *Conversion and partition.*—Conversion of a member of a joint Hindu family to any other religion operates as a severance of the joint status as between him and the other coparceners, but not as a severance among the other members *inter se*.¹ He ceases to be a coparcener from the moment of his conversion and is entitled to receive his share in the joint family property as it stood at the date of his conversion.²

28. *Births and deaths pending suit for partition.*—The institution of a suit for partition by an adult coparcener effects a severance of the joint status from the date of the suit.¹ Hence his share is not liable to be diminished nor can it augment by the birth or death of any member subsequent to the date of suit.²

Note 26.

¹ 37 Mysore 77 : 10 Mys. L.J. 49 F.B.

² *Manjunatha v. Narayana*, 5 Mad. 362 ; *Narayan Sah v. Shankar Sah*, 1929 Mad. 865 : 121 I.C. 1 F.B.

Contra.—*Pranjivandas v. Icharam*, 39 Bom. 734 [The same rule is to be applied at both partitions].

³ 37 Mysore 77 F.B.

Note 27.

¹ *Khunnilal v. Gobind*, 10 I.C. 477 : 33 All. 356 P.C.; *Kulada v. Haripada*, 40 Cal. 407 : 17 I.C. 257.

² Sec. 2, Act XV of 1938. See Appendix IV.

Note 28.

¹ *Honniah v. Eriah*, 37 Mysore 395 : 10 Mys. L.J. 129.

² *Girja Bai v. Sadashiv*, 43 Cal. 1031 P.C. ; *Syed Kasum v. Jorawar Singh*, 1923 P.C. 353 : 50 Cal. 84 ; *Palani Ammal v. Muthuvenkatacherla*, 1925 P.C. 49.

It is however different in the case of a suit for partition on behalf of a minor coparcener, because partition is deemed to occur as on the date when the preliminary decree is made and does not relate back to the date of institution of the suit.³ The share of a member is thus liable to vary with the birth and death of members, male or female, in the family up to the date of the preliminary decree.⁴ The death of a sole minor plaintiff before a preliminary decree for partition is made will put an end to the suit itself.⁵

29. *Births and deaths of females pending suit for partition.*—The share allotted to a female at a partition is her stridhana¹ and hence if a female entitled to a share dies after the date of partition, her share passes to her stridhana heirs by succession.² Her right to share at a partition is not a vested right.³ It is contingent on her being alive at the date of partition and if she is dead before that date, her stridhana heirs cannot represent her at the partition. Hence if such a female alive at the date of a minor coparcener's suit for partition dies before a preliminary decree is made therein, her share will remain an integral part of the estate available for division among the other members. Similarly if a female who otherwise would be entitled to a share comes into existence or is conceived by the time the preliminary decree is made, she will diminish the share of the

Note 28.

³ *Somakka v. Subbarayappa*, 27 Mysore 42; *Rajagopalachar v. Achama*, 28 Mysore 257; 1 Mys. L.J. 149.

⁴ 28 Mysore 257.

Contra.—*Ganapathy v. Subramaniam*, 1929 Mad. 738: 52 Mad. 845 [Share not liable to vary if suit is decreed]; *Ram Singh v. Fakira*, (1939) Bom. 256 [do.]; see also *Palaniappa v. Alayan*, 1922 P.C. 228: 44 Mad. 740.

⁵ 27 Mysore 42; *Kolla Narasimha Setty v. Nanjamma*, 45 Mysore 460: 18 Mys. L.J. 461, 465.

Note 29.

¹ See Sec. 10, 2 (f) below.

² See Sec. 12 below.

³ *Venkatapathiah v. Saraswathamma*, 43 Mysore 361: 16 Mys. L.J. 273, 279.

other members though she was not in existence at the time of the institution of the suit.

Child in the womb.—The idea that the rights of a child in the womb to property are worthy of protection is nothing new to Hindu Law. It is therefore not unnatural to suppose that in this Act designed to improve the position of women, the legislature should have thought that daughters in the womb have also rights in property worthy of protection.⁴ Hence a daughter or a sister conceived but not born at the time of partition will also diminish the share of the other members, provided she is a female relative coming within Sec. 8 and entitled to a share at the partition. But a female begotten and born after the partition will not affect the shares of the other members in any way. Such an unborn female has no right to re-open the partition.

30. *Re-opening partition.*—After-born sons can re-open a partition in some circumstances. See Notes 6 and 7 above. A partition may be re-opened if any coparcener has obtained an unfair advantage in the division of the property by fraud upon the other coparceners.¹ Where a partition is unfair or prejudicial to the interests of a minor coparcener, it may be set aside as regards himself.² A coparcener who is excluded from a share on partition by reason of a disability is entitled on removal of the disability to the same rights as a son born after partition.³

A Full Bench in Madras has held that a son adopted to a deceased coparcener is entitled to re-open a partition of family property effected by the surviving coparceners

Note 29.

⁴ Reilly, C.J., in *Chikkanarasappa v. Honnuramma*, 43 Mysore 181 : 16 Mys. L.J. 167, 174.

Note 30.

¹ *Moro Viswanath v. Ganesh*, (1873) 10 Bom. H.C. 444, 451 ; *Lakshman v. Gopal*, 23 Bom. 385.

² *Krishnabai v. Khangouda*, 18 Bom. 197.

³ *Mitakshara*, Chap. II, Sec. 10, paras 6–7.

before the adoption took place.⁴ The position is different in Mysore.⁵

31. *Sub Sec. (2): Devolution of divided member's interest.*—As soon as there is a severance of joint status, the members cease to have community of interest or unity of possession in the family properties. Thenceforth they hold the property in defined shares as separate owners, though the property may remain physically undivided. Such separate share or interest of the member passes to his own heirs, male or female, by succession. Thus, where the deceased had never actually taken possession of the share allotted to him nor separately enjoyed the same, yet as there was evidence in the case to show that there was the intention of the coparceners to divide, it was held that the deceased's share passed to his heirs by succession.¹ Where one of the parties to a decree for partition died after a separation in interest but before the actual division by metes and bounds, it was held that his interest passed by succession to his own heirs and not by survivorship to the other coparceners.²

32. *Reunion.*—‘Reunion’ in Hindu Law is the result of an agreement between the parties, a real contract in fact, express or implied, that the effects which had been divided are thrown together again and the wealth of the parties, present or future, becomes common property, for profit or for loss, till it is partitioned again.¹ It is not a mere quasi-contract. According to Smritichandrika, ‘A reunion is completed not by the union of the coparceners alone, but by the union of their wealth. It must therefore be understood that the term ‘re-union’ does not apply, until the effects

Note 30.

⁴ *Sankaralingam v. Veluchami* (1942) 2 M.L.J. 678 F.B.

⁵ See *Shankaramma v. Krishna Rao* 43 Mysore 415 : 16 Mys. L.J. 376.

Note 31.

¹ *Siddalingappa v. Nanjamma*, 7 Mys. L.R. 130 F.B.

² *Thumbay Gowda v. Syed Buran Sab*, 19 Mysore 142.

Note 32.

Gokulpathi v. Pasupathi, 1942 Cal. 331 : 46 C.W.N. 86.

which had been divided, are again mixed together as before, so as to destroy altogether every mark indicating division. A mere joint residence of coparceners does not amount to a reunion.²

In order to constitute a reunion there must first have been a separation between the parties who afterwards reunite. A reunion under Hindu Law can only be validly effected as between the parties or some of them who made the original partition.³ But according to the *Mitakshara* and *Smritichandrika*, a member of a joint family once separated can reunite only with his father, brother or paternal uncle but not with any other relation as for instance a paternal grandfather or a paternal uncle's son, though such relation was a party to the original partition.⁴ Some other commentators hold that a person may reunite with any relation who was a party to the original partition.⁵ In Mysore, where a person claimed property by survivorship from his cousin with whom he said he was reunited, it was held that there can be no reunion between cousins and that there could be no survivorship also between persons who were originally divided in interest and could not legally reunite.⁶

No writing is necessary for a reunion.⁷

33. *Intention necessary to reunite*.—After a separation in interest, the mere fact that the parties live together or trade together does not amount to a reunion. There must

Note 32.

² *Smritichandrika*, Chap. XII ; 1942 Cal. 331 ; *Jyotish Chandra v. Prafulla Chandra*, (1939) 43 C.W.N. 937.

³ *Ramachar v. Shamanna*, 29 Mysore 157 : 2 Mys. L.J. 89 ; *Balabux v. Rukmabai*, 30 Cal. 725, 734 P.C. ; *Aksay v. Hari*, 35 Cal. 721.

⁴ *Hira Singh v. Mst. Munlan*, 1928 Lah. 122 : 9 Lah. 324 ; *Ram Narain v. Pan Kuer*, 1935 P.C. 9 : 14 Pat. 268.

⁵ *Viswanath v. Krishnajeel*, (1866) 3 Bom. H.C.A.C. 69, 73 ; *Abhai Charn v. Mandal*, 19 Cal. 634 ; *Balkishen Das v. Ramnarain*, 30 Cal. 738, 753 P.C.

⁶ *Nandyanna v. Basappa*, 13 Mysore 65.

⁷ *Mahalakshamma v. Suryanarayana*, 1928 Mad. 1113 : 51 Mad. 977.

be an intention of the parties to *reunite in estate and interest*,¹ which cannot be inferred without positive evidence.² Where after a partition between *A*, *B* and their deceased brother's son *C* it was found that *A* lived jointly with *C* but was not 're-united' with him in the special sense of that term in Hindu Law, it was held that *A* was not entitled to any preference over *B* in the matter of succession to *C*.³ There can be no reunion unless there is an agreement between the parties to reunite with the intention to remit them to their former status as members of a joint family. Hence a reunion to which a minor is a party is invalid in as much as he is incapable of giving a valid consent thereto.⁴

34. *Partition created by so-called will*.—Even the father and head of the family has no right to make a partition by will of the joint family property among the members of the family except with their consent. Thus where a father and head of the joint family in a document called a 'will' recited *inter alia* that he had divided the family properties among his sons in proportion mentioned in it, and that in anticipation of the execution of the document the sons had already been put into possession of their shares, and the evidence showed that the division had been assented to, acquiesced in and acted upon by the sons, it was held that the document was not a will, but was intended to operate from the date of its execution and was good evidence of a family arrangement contemporaneously made and acted upon by all the parties.¹

Note 33.

¹ *Ram Huree v. Trihee Ram*, (1871) 15 W.R. 442; *Balkishen Das v. Ram Narain*, 30 Cal. 738, 753 P.C.; *Jatti v. Banwari Lal*, 1922 P.C. 136; 74 I.C. 462; *Gokulpathi v. Pasupathi*, 1942 Cal. 331; 46 C.W.N. 86.

² *Govindoss v. Official Assignee of Madras*, 1934 P.C. 138; 150 I.C. 1.

³ 1942 Cal. 331.

⁴ *Lakkanna v. Basava*, 15 Mysore 96; *Balabux v. Rukmabai*, 30 Cal. 725 P.C.; see also *Kuta v. Kuta*, (1864) 2 Mad. H.C.A.C. 235; *Sengoda v. Muthu*, 1924 Mad. 627; 47 Mad. 567.

Note 34.

¹ *Brijraj Singh v. Sheodan Singh*, 19 I.C. 826; 35 Ali. 337 P.C.

Similarly no member of a joint family can dispose of even his own undivided share in the joint family property by a will. But if a disposition so made is assented to by all the other members of the family, the document may be good evidence of a family arrangement and effect will be given to the disposition so made, as a family arrangement.²

35. *Subject-matter in partition suit.*—In *Anantagupta v. Srirangiah Setty*¹ it is held that a suit by a coparcener of a joint Hindu family for partition must be valued for purposes of jurisdiction not on the value of the plaintiff coparcener's share but on the value of the whole property of the coparcenary calculated in accordance with Sec. 11, Civil Courts Act. This follows an earlier Full Bench decision in *Aghorappa v. Chennabasappa*,² where it was held that a suit for partition by a coparcener is an exception to an ordinary suit of any other description and that it is only in such a suit that the legislature has conferred on a Civil Court the general power of adjudicating upon the rights of all parties who may be interested in and entitled to share along with plaintiff in the whole of the properties which ought to form the subject-matter of division. Some later Full Bench decisions holding that it is the value of the share claimed by the plaintiff and not of the whole estate that determines jurisdiction, are not exactly suits for partition of joint family property between coparceners.³

Note 34.

² *Lakshmichand v. Anandi*, 1926 P.C. 54 : 95 I.C. 556.

Note 35.

¹ 46 Mysore 714 : 19 Mys. L.J. 446.

² 12 Mys. L.R. 308 F.B. ; see also *Ramakrishnappa v. Seshagirirao*, 3 Mysore 76.

³ *Lakshmiah v. Venkataramiah*, 6 Mysore 45 F.B. [Suit for share of property set apart for future partition] ; *Mirle Subba Rao v. Parvatamma*, 9 Mysore 177 F.B. [Suit for cancellation of partition deed] ; *Paratal Nagappa v. Aswathiya*, 3 Mys. L.J. 150 : 30 Mysore 265 F.B. [Suit for dissolution of partnership].

Section 8

Certain females entitled to shares at partition.—(1) (a) At a partition of joint family property between a person and his son or sons, his mother, his unmarried daughters and the widows and unmarried daughters of his predeceased undivided sons and brothers who have left no male issue shall be entitled to share with them.

(b) At a partition of joint family property among brothers, their mother, their unmarried sisters and the widows and unmarried daughters of their predeceased undivided brothers who have left no male issue shall be entitled to share with them.

(c) Sub Sections (a) and (b) shall also apply *mutatis mutandis* to a partition among other coparceners in a joint family.

(d) Where joint family property passes to a single coparcener by survivorship, it shall so pass subject to the rights to shares of the classes of females enumerated in the above Sub Sections.

(2) Such share shall be fixed as follows :—

(a) in the case of the widow, one-half of what her husband, if he were alive, would receive as his share ;

(b) in the case of the mother, one-half of the share of a son if she has a son alive, and, in any other case, one-half of what her husband, if he were alive, would receive as his share ;

(c) in the case of every unmarried daughter or sister, one-fourth of the share of a brother if she has a brother alive, and, in any other case, one-fourth of what her father, if he were alive, would receive as his share : provided that the share to which a daughter or sister is entitled under this section shall be inclusive of, and not in addition to, the legitimate expenses of her marriage including a reasonable dowry or marriage portion.

(3) In this section, the term “ widow ” includes, where there are more widows than one of the same person all of them jointly, and the term “ mother ” includes a step-mother and, where there are both a mother and a step-mother, all of them jointly and the term “ son ” includes a step-son as also a grandson and a great-grandson ; and the provisions of this section relating to the mother shall be applicable *mutatis mutandis* to the paternal grandmother and great-grandmother.

(4) Fractional shares of the females as fixed above shall relate to the share of the husband, son, father or brother as the case may be and their value shall be ascertained by treating one share as allotted to the male and assigning therefrom the proper fractional shares to the female relatives.

(5) Each of the female relatives referred to in Sub Section (1) shall be entitled to have her share separated off and placed in her possession :

Provisos.—Provided always as follows :—

(i) No female relative shall be entitled to a share in property acquired by a person and referred to in Section 6, so long as he is alive ;

(ii) No female whose husband or father is alive shall be entitled to demand a partition as against such husband or father, as the case may be ;

(iii) A female entitled to a share in any property in one capacity of relationship shall not be entitled to claim a further or additional share in the same property in any other capacity.

Illustration.—*A* and his son *B* effect a partition of their family property. *A* has a mother and two unmarried daughters. Their shares will be as follows:

Father	1
Son	1
Mother	$\frac{1}{2}$
Two daughters	$\frac{1}{4}$ each

The property will be divided in the above proportion, the father getting $\frac{1}{3}$, the son $\frac{1}{3}$, the mother $\frac{1}{6}$ and each daughter $\frac{1}{12}$.

SYNOPSIS

Note.—(1) Scope of the section ; (2) ‘ At a partition ’ ; (3) Clause (1) (a) ; (3 A) Daughter begotten before but born after partition ; (3 B) Daughter begotten as well as born after partition ; (3 C) Sub Sec. (3) Paternal grandmother and great-grandmother ; (3 D) Females who do not get a share ; (4) Clause (1) (b) ; (5) Clause (1) (c) ; (6) Clause (1) (d) ; (7) Sub Sec. (2) ; (8) Sub Sec. (5) ; (9) Proviso (i) ; (10) Proviso (ii) ; (11) Proviso (iii) ; (12) Illustration to the section.

1. *Scope of the section.*—Before this Act came into force no female had a right at any time to a share in the joint family property. This Act for the first time by this section declares certain females to be entitled to shares at a partition between coparceners in the joint family. Even

under this Act, unless a partition takes place between the coparceners, no female will be entitled to a share.

When a person and his son or sons sever their joint status, his mother, his unmarried daughters and the widows and unmarried daughters of his predeceased undivided sons and brothers who have left no male issue are entitled to shares in the property: clause (1) (a); where brothers effect a partition among themselves, their mother, their unmarried sisters and the widows and unmarried daughters of their predeceased undivided brothers who have left no male issue are entitled to shares: clause (1) (b); clause (1) (c) states that females similarly related shall be entitled to shares at a partition between other coparceners.

Sub Sec. (3) makes the provisions of this section relating to mother applicable *mutatis mutandis* to the paternal grandmother and great-grandmother. Mother in this section includes the step-mother. No other female relatives are entitled to shares.

Though these female relatives are declared entitled to shares at a partition, the Act nowhere gives them a right to demand or compel a partition among coparceners who choose to remain joint.¹ Their right to shares can be enforced only when a partition takes place in the family. Their right is not an absolute right to a share, but only a right to a share at a partition. It is not a vested right. It is a contingent right, contingent on their coming within the words of Sub Sec. (1) both as to persons and as to circumstances.² But there is no chance of a partition taking place when property passes to a sole-surviving coparcener. Hence clause (1) (d) provides that in such a case it shall so pass subject to the rights to shares of the classes of females enumerated in the section. According to Sec. 9. (2) (b), an

Note 1.

¹ *Venkatapathiah v. Saraswathamma*, 43 Mysore 361 : 16 Mys. L.J. 273.

² 16 Mys. L.J. 273, 277.

adoption made by a widow to her husband does not affect her right to obtain at any time, at her option either maintenance charged upon the property inherited from her husband, or a separate share therein equal to one-half of the share of the adopted son.

When a partition takes place and the shares of the female relatives are fixed according to Sub Sec. (2), they are entitled to have their shares separated off and placed in their possession so that they can enjoy it separately, according to Sub Sec. (5). The provisos at the end of the section are not provisos only to Sub Sec. (5) of this section.³

In Southern India the practice of allotting shares upon partition to wives, widows, mothers or daughters which prevailed in former times had become obsolete.⁴ But in many other parts of India governed by the Mitakshara Law and in Bengal the practice of allotting shares to females is still prevalent, the right being based on explicit texts of Yajnavalkya Smriti and liberally interpreted by Vijnaneswara, who has always been a sincere advocate of women's rights. However even in the provinces where those females are allotted shares, they are not given the right to compel partition.⁵ This section to a large extent restores the practice of allotting shares to certain females, which has the high authority of the ancient law givers. The general rules of Hindu Law as to the time of ascertainment of the shares and the incidents of partition are left unaffected by this section.

2. '*At a partition*'.—A partition between coparceners can take place only if any of them wishes to be divided. If they are not willing to divide, the Act gives no one else the power to compel them to make a partition between themselves. It follows that a female member of a joint family also

Note 1.

³ 16 Mys. L.J. 273, 280.

⁴ *Subramaniam v. Arunachellam*, 28 Mad. 1, 8.

⁵ See *Punna Bibee v. Radha Kishen*, 31 Cal. 476 ; *Pratapmull v. Dhanabati*, 1936 P.C. 20 : 63 Cal. 691.

cannot compel the coparceners to divide between themselves. Even if a female member may have a right to divide herself from the joint family, under Sec. 7, her insistence on partition will never divide the coparceners between themselves, and it is only at a partition between coparceners that the section gives her a share.¹ Thus where the coparceners resisted a suit by a female member of the family for partition and for a share on the ground that they did not wish to be divided from each other, it was held that the female member in those circumstances had no right to a share in the family property.²

‘Partition’ is used in this Act as including both division in status and actual physical division of the property into different lots. Partition in this section means a partition made after this Act came into force. Where in a suit for partition filed on behalf of a minor in 1933, a preliminary decree was passed only in 1935 when this Act had come into force, the widowed mother of the minor was held entitled to a share.³ If the preliminary decree had been passed in that case before this Act came into force, the female relative could not have claimed a share.⁴

It is however not clear if a female entitled to a share in the joint family property, can, like male coparceners, insist on having a proportionate share in each item of the family properties.

3. *Clause (1) (a).*—Women to whom this Sub Section gives a right to share are those women of the family who, before the Act, had a claim for maintenance against the family as a whole and not against any of the particular male sharers in the partition. The purpose of this section appears

Note 2.

¹ *Venkatapathiah v. Saraswathamma*, 43 Mysore 361 : 16 Mys. L.J. 273, 279.

² *Ibid.*

³ *Sanathkumar v. Veerendrakumariah*, 43 Mysore 534 : 16 Mys. L.J. 521.

⁴ *Shankaramma v. Krishna Rao*, 43 Mysore 415 : 16 Mys. L.J. 376, 393.

to be to give such women of the family a right to claim a share in such a partition instead of having to be content with a right to maintenance.¹

The females entitled to a share at a partition between a person and his son or sons are:—

(i) *his mother*.—This term includes a step-mother and where there are both a mother and a step-mother, all of them jointly : See Sub Section (3). All of them jointly take one half of the share of a son: See Sub Section (2) (b).

The mother takes the share allotted to her as her stridhana: See Sec. 10 (2) (f). Hence if she dies after the partition takes place and before she is placed in possession of her share, her stridhana heirs as her legal representatives can sue for recovery of that share within the period of limitation prescribed therefor. But if she dies before the partition takes place, her right to a share lapses as it is a right contingent on her being alive at the time of partition.

The share allotted to a mother is without reference to any stridhana property she may possess. Her share is not inclusive of but independent of any stridhana she may already possess.

(ii) *his unmarried daughters*.—Married daughters have no right to a share at a partition. Where there are more than one unmarried daughters, each takes one-fourth of the share of a brother if she has a brother alive and if there is no brother alive, one-fourth of what her father if he were alive would receive as his share. She takes a full estate in the share she gets at the partition.

The one-fourth share to which a daughter is entitled under this section is inclusive of and not in addition to the legitimate expenses of her marriage including a reasonable dowry or marriage portion: See Sub Section (2) (c).

Note 3.

¹ *Kolla Narasimha Setty v. Nanjamma*, 45 Mysore 460 : 18 Mys. L.J. 461, 470.

3 A. *Daughter begotten before but born after partition.*—A daughter who is in her mother's womb at the time of partition is a daughter alive at the time though not born.¹ As she is necessarily unmarried, she has also a right to a share as if she was in existence at the time of partition. As the right to a share is already vested in her, it is submitted she will be entitled to have the partition reopened if no share is reserved for her at the time of partition. This right of recovering the share she is entitled to, but for some reason overlooked or denied by the coparceners at the partition, is quite distinct from the right to initiate a partition, which she or any other female does not possess under the Act.

3 B. *Daughter begotten as well as born after partition.*—No question of a right to a share at a partition arises in the case of a daughter begotten as well as born after partition, because she is not at all in existence at the time of partition. No considerations like those which arise in the case of a son begotten as well as born after partition can arise in the case of the after-born daughter, because, unlike a son who will have rights by birth in the family property, the daughter has no vested right in it by birth. She cannot therefore get the partition reopened. Until her marriage, she will be a member of her father's family. She will have a right to be maintained by him till then, but not to a share in her father's property. See also the proviso (i) to this section.

(iii) *Widows of predeceased sons who have left no male issue.*—The term 'widow' in this section includes, where there are more widows than one, of the same person, all of them jointly, according to Sub Sec. (3).

A widow takes one half of what her husband, if he were alive, would receive as his share. Hence the co-widows jointly take only one half of what their husband if alive would have taken. The share allotted to them on partition will be their Stridhana property.

Note 3 A.

¹ See *Chikkanarasappa v. Honnuramma*, 43 Mysore 181 : 16 M. s. L.J. 167.

Who have left no male issue.—These words have to be understood to refer to the date of partition. Thus though a husband has left behind him a son, his widow will be entitled to a share if that son is not alive on the date of the partition. To construe these words otherwise would be contrary to the general intention of the Act to improve the position and rights of women.¹ The existence of a son at the time of partition, even if he happens to be a posthumous son of her husband is a bar to her getting a share.² Male issue means male descendants up to three generations. See Sec. 3 (f), above.

As in the case of the mother, the share allotted to a widow is also not inclusive but independent of any Stridhana she may already possess.

(iv) *Unmarried Daughters of predeceased sons who have left no male issue.*—See the Notes under unmarried daughters (ii), above.

(v) and (vi) *Widows and unmarried daughters of predeceased undivided brothers who have left no male issue.* See the Notes under (iii) and (ii), above.

Suppose *A* with his sons and *B* his brother form an undivided Hindu family. If *B* dies leaving his wife and daughters, the joint family property in which *B* had an interest will pass by survivorship to *A* and his sons. In such a case if *A* and his sons effect a partition between themselves, the widow and unmarried daughters of *B* will each get a share. If *A* and his sons do not divide their status, *B*'s widow and daughters have only a right to get maintenance out of the joint family properties.³

Note 3 B.

¹ *Kolla Narasimha Setty v. Nanjamma*, 45 Mysore 460 : 18 Mys. L.J. 461, 470.

² 18 Mys. L.J. 461, 468.

³ *Rangamma v. Sanjiviah*, 3 Mys. L.R. 43 ; *Srinivasa Iyengar v. Ramakka*, 11 Mysore 59.

3 C. *Paternal grandmother and great-grandmother.*—According to Sub Sec. (3) the term ‘son’ includes a step-son as also a grandson and a great-grandson. But the term ‘mother’ includes a step-mother and not a grandmother or a great-grandmother. Only, the provisions of this section relating to the mother shall be applicable *mutatis mutandis* (with necessary changes) to the paternal grandmother and great-grandmother. Hence at a partition coming under this clause (1) (a), if there is both a mother and a paternal grandmother of the person, the paternal grandmother will not be entitled to a share. But if there is no mother, the paternal grandmother will be entitled to a share in view of the provisions of Sub Sec. (3).

3 D. *Females who do not get a share.*—The enumeration of certain female relatives alone as being entitled to shares at a partition indicates that not all the female members in a family will be entitled to shares. Thus suppose *A* has two sons *B* and *C* and a predeceased son *D*. Then at a partition between *A*, *B* and *C*, their wives and the daughters of *B* and *C* and the widows and unmarried daughters of *D* if he has left a son do not get any share. It will be noticed that in no case is the wife of a coparcener participating in the partition entitled to a share. But it is difficult to understand why if *A*’s unmarried daughters are entitled to shares, the unmarried daughters of *B* and *C* should not also be similarly entitled to get shares.

4. . *Clause (1) (b).*—The partition among brothers which this clause speaks of is a particular instance of the general class of partitions between groups of coparceners not consisting solely of a man and his male descendants which came under clause (1) (a).

At a partition of joint family property among brothers, the female relatives who take a share are :—

- (i) their mother,
- (ii) their unmarried sisters and

(iii) and (iv) the widows and unmarried daughters of their predeceased undivided brothers who have left no male issue. No other female relative is entitled to share at a partition to which this clause applies.

5. *Clause (1) (c).*—Clauses (1) (a) and (1) (b) dealt with two instances of partition between two particular groups of coparceners. This clause deals with the cases of all the partitions among coparceners not explicitly provided for by clauses (1) (a) and (1) (b). Thus a partition between a person and his paternal uncle or one between cousins will come under this clause.

The words *mutatis mutandis* (i.e., with necessary changes) as used in this clause are not very helpful in finding how far the principles contained in clauses (1) (a) and (1) (b) are applicable or have to be applied to partitions coming under this clause. If clause (1) (b) is applicable, the widowed mother of every coparcener concerned in the partition is entitled to a share. But if clause (1) (a) is applicable, a mother of a coparcener will be excluded if she also happens to be the widowed daughter-in-law (or a brother's widow) of a coparcener concerned in the partition. Hence the only way in which we can reconcile the provisions of clauses (1) (a) and (1) (b) in applying them to cases of partition which come within this clause is as Reilly, C.J., lays down, 'to treat the mother of a coparcener concerned as entitled to a share except when she is the widowed daughter-in-law of a coparcener taking part in the partition.'¹ Thus where a partition took place between a person and his paternal uncle, the mothers of both were held entitled to get shares.² There is also another exception than the one pointed out in the above case, namely, where the mother of a coparcener concerned is the brother's widow of a coparcener taking part in the partition. This is clear from the

Note 5.

¹ *Nagendrasa v. Ramakrishnasa*, 19 Mys. L.J. 277, 282.

² *Ibid.*

wording of both the clauses (1) (a) and (1) (b). See also illustration 3, below.

Illustrations.—(1) *A*, *B* and *C* are brothers living jointly with *A*₁ the son of *A* and *B*₁ the son of *B*, *C* having no son. *C* dies leaving his widow. *A* and *B* also die. If a partition takes place between *A*₁ and *B*₁, the partition comes under clause (1) (c) and the principles of clause (1) (b) will be applicable to the case. The mothers of *A*₁ and *B*₁ are entitled to shares. But *C*'s widow will not be entitled to any share because she is

not the mother of any coparcener concerned in the partition nor is she the widow of any predeceased undivided brother of any coparcener concerned in the partition.

(2) If *A* dies leaving no widow and *C* dies leaving his widow and a partition takes place between *A*₁, *B* and *B*₁, then *C*'s widow will be entitled to a share because *C* is a predeceased undivided brother of *B* a coparcener taking part in the partition and has left no male issue.

(3) In the above case suppose *A* has also left his widow and *B* has a mother. At a partition between *A*₁, *B* and *B*₁, *A*₁'s mother (*A*'s widow) and *B*'s mother are both entitled to get shares according to the decision in *Nagendrasa v. Ramakrishnasa*.² The position of *A*'s widow in the partition is anomalous. Being the mother of *A*₁ she is entitled to a share. Being the widow of *A* (a predeceased undivided brother of *B* a coparcener taking part in the partition) and as *A* has left a son *A*₁, according to both clauses (1) (a) and (1) (b) she is not entitled to a share. This aspect does not appear to have been brought to the notice of the learned Judges in *Nagendrasa's* case.

6. *Clause (1) (d).*—When joint family property passes to a single coparcener by survivorship it ceases to have the character of joint property and becomes his separate property. Clauses (1) (a), (1) (b) and (1) (c), it is seen, have reference to joint family property which alone is liable to partition. But this clause has reference to property which has ceased to be liable to partition by passing to the hands of the last coparcener of the family. Once the property passes to the sole-surviving coparcener, there is no question of a partition taking place and women enumerated in the previous clauses who could get shares only at a partition would have nothing. Hence this Act designed to improve the rights of women provides in this clause that the rights of such women shall not be defeated by the joint family property passing to a single coparcener by survivorship. A woman of the family who

would have had a right to a share under clauses (1) (a), (1) (b) or (1) (c) will under this clause read with Sub Sec. (5) of this section have a right to sue and to have her share separated off and placed in her possession.¹ This right conferred on the woman to enforce her right to a share is one which arises for the first time at the moment when the property which was joint becomes the separate property of the sole-surviving coparcener by survivorship.¹

It will be noticed from the illustrations in Note 5, above, that a woman in the family who would get a share if a partition is made at one moment would not necessarily be entitled to a share if the partition took place at another moment when the position of the family is different. C's widow in illustration (2) was entitled to a share. But when the position of the family altered, by B's death, she would not get a share at a partition as in illustration (1). However, though there is such an element of uncertainty in a woman having a right to a share when there are more coparceners than one in the family, every such woman enumerated in Sub Sec. (1) is without any uncertainty whatever entitled to a share under this clause when the joint family property passes to a single coparcener by survivorship. Thus C's widow would be entitled to a share in the joint family property when it passed to a single coparcener, whoever he may be.

This clause deals with the case where joint family property passes by survivorship to a single coparcener. Suppose one of two coparceners constituting an undivided family renounces all his interest in the joint family property in favour of the other. The joint family property will then have passed to a single coparcener, but not by survivorship at death of the other coparcener. Consistent with the spirit of this Act, it is submitted that in such a case also

Note 6.

¹ *Dakshinamurthy v. Subbanna*, 45 Mysore 102 : 18 Mys. L.J. 191

the single coparcener should take it subject to the rights to shares of the classes of females enumerated in Sub Sec. (1).

7. *Sub Sec. (2).*—A woman receiving a share in her relationship as a widow gets one-half of what her husband if alive would receive. A mother takes one-half of the share of a son. An unmarried daughter is entitled to get as her share at a partition one-fourth of the share of a brother if she has a brother alive and in any other case one-fourth of what her father if he were alive would receive as his share. But this share given to an unmarried daughter or sister is inclusive of, and not in addition to, the legitimate expenses of her marriage including a reasonable dowry or marriage portion. Having this provision in view it was decided that the upward limit of the amount of joint family funds and property that can be applied towards the marriage expenses of a daughter is the share to which she is entitled to in the family properties in the event of a partition, though it is open to the father to spend more out of his own resources, if he wishes to do so.¹

8. *Sub Sec. (5).*—This sub section merely provides that women entitled to shares in certain circumstances under Sub Sec. (1) can get those shares separated off physically and delivered to their possession. It does nothing to enlarge the provisions of Sub Sec. (1) as to the women who are entitled to get shares or as to the circumstances in which they are entitled to get shares. If a woman is not entitled under Sub Sec. (1) to a share by coming within the wording of that sub-section both as to the persons and as to the circumstances, then she has no share at all to be cut off physically and delivered to her under this sub section.¹

Where joint family property passes to a single coparcener under clause (1) (d) and he alienates it, is a woman of the

Note 7.

¹ *Sampangiramah v. Subba Rao*, 42 Mysore 564 : 15 Mys. L.J. 529.

Note 8.

¹ *Venkatapathiah v. Saraswathamma*, 43 Mysore 361 : 16 Mys. L.J. 273, 277.

family coming under Sub Sec. (1) entitled to resist the possession claimed by the alienee until her share is divided and placed in her possession? This question was answered in the negative in *Chikkanagamma v. Sivaswamy*.² In that case Singaravelu Mudaliar, J., observes: "This clause seems to suggest that till the property of her share was separated off she had no right to possession, and the expression 'placed in her possession' goes to show clearly that she was not entitled to be in possession prior to her being so placed."³ As pointed out clearly in the judgment, this right of possession is something quite different from a female's right of residence in the family house.⁴ Her right of residence is substantial enough to entitle her to eject from the family house those who are mere trespassers.⁵

9. *Proviso i.*—Provisos i, ii and iii are not provisos to Sub Sec. (5) in particular. This proviso relates to self-acquired property referred to in Sec. 6 and has nothing to do with this section which deals with partition between coparceners. According to this proviso no female relative is entitled to a share in the separate property of a male so long as he is alive. Thus a daughter, a wife, a mother or other female relative is not entitled to a share in the separate property of a person so long as he is alive. But they may have other rights, if any, like those of maintenance or of residence, even in his lifetime. After his death, if the property descends to his male issue, the property will be the joint family property in their hands, and these female relatives will be entitled to shares in it as provided by the other provisions of this section.

Note 8.

² 44 Mysore 473 : 17 Mys. L.J. 481 ; but see *Chikkabyamma v. Nanjannah*, 15 Mys. L.R. 135.

³ 17 Mys. L.J. 481, 486.

⁴ See also *Venkatammal v. Andyappa*, 6 Mad. 130 ; *Bai Devkore v. Shanmukhram*, 13 Bom. 101 ; *Suryanarayana v. Balasubramanya*, 43 Mad. 635 (unmarried daughter).

⁵ 15 Mys. L.R. 135.

10. *Proviso ii.*—According to this proviso a wife or a daughter is not entitled to demand a partition as against her husband or father respectively. A wife in the normal state of things lives with her husband and is entitled to be maintained at the expense of the joint family if the family remains undivided and by the husband after division, and in certain circumstances she is also entitled to separate maintenance.¹ A daughter is entitled to be maintained until her marriage by her father or on his death out of his estate.² After marriage she ceases to be a member of her father's family, and will thereafter be entitled to be maintained by her husband.³

Entitled to demand a partition.—The word 'partition' in this proviso should not be interpreted as referring only to physical separation of the property. That word in this section and at other places in this Act is used to denote both division in status and actual physical separation of the property into different lots.⁴ Grammatically the wording in the proviso may suggest that the females here mentioned may not demand a partition, but other females to whom Sec. 8 applies may demand a partition. But that cannot be, if we remember the proper limits of interpretation of provisos. As observed by Reilly, C.J., 'A proviso in a statute is properly used to indicate that a general provision to which it relates does not apply to instances which the proviso cuts out of that general provision. Provisos are also used at times to quiet misapprehensions, sometimes superfluous misapprehensions, that rights have been affected by the provisions to which the proviso relates, in a way unintended by the legislature. On the other hand

Note 10.

¹ See Sec. 23 below ; *Jayanti v. Alamelu*, 27 Mad. 45, 48.

² *Bai Mangal v. Bai Rukmani*, 23 Bom. 291.

³ *Kartik Chunder v. Saroda Sundari*, 18 Cal. 642.

⁴ *Venkatapathiah v. Saraswathamma*, 43 Mysore 361 : 16 Mys. L.J. 273, 280.

it is quite illegitimate to interpret a proviso so that it extends the content of the provisions to which it relates. If there is an ambiguity in the general provision to which the proviso relates, the proviso may sometimes be used to help us to determine which of the two ambiguous interpretations of the main provision is correct.⁵ There is no ambiguity in the wording of the main provision, namely Sub Sec. (1), according to which no female has any right to demand a partition and this proviso cannot be interpreted so as to confer that which the main provision itself does not confer. This proviso can only mean that an unmarried daughter who gets a share under clause (1) (a) at a partition between her father and her brother, cannot demand a partition of that share against her father's will, even granting that a female member is entitled to divide herself in status from the joint family according to Sec. 7 (1). Similarly even if a wife is entitled to divide herself in status from the joint family, then this proviso will preclude her from exercising that right against her husband's will.⁵

11. *Proviso iii.*—According to this proviso no female can claim shares in any property in more than one capacity of relationship. Thus for instance a female may be the mother of one coparcener and also the widow of a pre-deceased brother of another coparcener, and she cannot claim shares in both capacities.

12. *Illustration to the section.*—In the illustration to the section, though the daughters are each entitled to a fourth share of a brother in the property, they will not be entitled to get separate possession of it so long as the father is alive, because according to Proviso ii to the section she is not entitled to demand a partition of it against her father's will.¹

Note 10.

⁵ 16 Mys. L.J. 273, 281.

Note 12.

¹ *Venkatapathiah v. Saraswathamma*, 43 Mysore 361 : 16 Mys. L.J. 273, 281 ; see also Note 10 above.

The daughter's share will therefore be taken by the father. In that capacity his possession of the daughter's share will not be adverse to her. He will hold it in trust for her. At the moment partition takes place, the right to the share vests in her though she cannot claim exclusive possession of that share against the father's will. As the property is however vested in her, it is submitted that on her death thereafter, that property will devolve on her Stridhana heirs according to the order given in Sec. 12.

CHAPTER X ADOPTION

Section 9

(1) *Authority to adopt.*—In the absence of an express prohibition in writing, by the husband, his widow, or, where he has left more widows than one, the seniormost of them shall be presumed to have his authority to make an adoption.

(2) *Effect of adoption.*—No adoption made by a widow shall—

(a) divest her of her estate in any Stridhana property, other than such as she may have taken by inheritance from her husband ; or

(b) affect her right to obtain at any time, at her option, either maintenance charged upon the property inherited from her husband, or a separate share therein equal to one-half of the share of the adopted son ; or

(c) affect her right to manage such property, as well as to act as the guardian of the person of the adopted son, during his minority.

(3) *Validity of pre-adoption arrangements.*—An arrangement made prior to or at the time of an adoption as aforesaid, whereby the adopted son if he be a major, or his natural father or mother if he be a minor, agrees to his rights in or over the property of the adoptive father being limited, curtailed, or postponed in the interests of the adoptive mother, shall be valid and binding on the adopted son.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Object of adoption ; (3) Who may adopt ; (4) Adoption by widow ; (5) Who may be authorised to adopt ; (6) Form of authority ; (7) Authority to be strictly followed ; (8) Exercise of authority to adopt—Time limit ; (9) Adoption by widow without husband's authority ; (10) Validity of adoption and rule of divesting ; (11) Termination of a widow's power to adopt ; (12) Who may give in adoption ; (13) Who may be taken in adoption ; (14) Dvyamushyayana or son of two fathers ; (15) Adoption of illatom son-in-law ; (16) Adoption of daughters by dancing women ; (17) The act of giving and receiving ; (18) Ceremony of Dattahomam ; (19) Consideration for adoption ; (20) Renunciation by adopted son of rights of inheritance ; (21) The doctrine of

factum valet; (22) Who is the adoptive mother; (23) Results of a valid adoption; (24) Adopted son's rights date from adoption; (25) Second adopted son; (26) Sub Sec. (2) Effect of adoption by a widow; (27) Sub Sec. (3) Pre-adoption arrangements; (28) Effect of invalid adoption; (29) Gift to person whose adoption is invalid; (30) Estoppel; (31) Limitation.

1. *Scope of the section.*—Sub Sec. (1) relates to the presumption of authority of a widow to adopt to her husband. In the absence of a written prohibition by the husband, it shall be presumed that the widow has the authority of her husband to make an adoption. But the clause does not make it unnecessary for a widow who wishes to make an adoption, to have either the authority of her husband or that of his sapindas.¹ As observed by their Lordships of the Privy Council, it seems to be opposed to principle and authority that a widow should have an inherent power to adopt of her own volition.²

This Sub Sec. (1) is only an amendment of procedure to be adopted by courts and does not amend the substantive law on the question of a widow's authority to adopt. It is not of retrospective effect at all. The language of the Sub Section clearly shows that the presumption of authority to adopt can be raised in favour of the widow only in the case of adoptions made after the Act came into force.³

Sub Sec. (2) states how the widow's rights in respect of property are affected by an adoption made by her and Sub Sec. (3) states what arrangements made prior to or at the time of adoption are binding on the adopted son. This section leaves the substantive law of Adoption in Hindu Law unaffected in other respects.

2. *Object of adoption.*—The objects of Adoption are twofold. The first, the religious object consists in the securing of spiritual benefit by having a son who will offer

Note 1.

¹ *Srinivasarao v. Lakshmanrao*, 42 Mysore 37 : 14 Mys. L.J. 237.

² *Balasubramanya v. Subbayya*, 1938 P.C. 34 : 172 I.C. 724 ; see also *Rudrappa v. Veerabhadrapa*, 16 Mysore 227.

³ 42 Mysore 37 : 14 Mys. L.J. 237.

funeral cakes and libations of water to the manes of the adopter and his ancestors. The other is the secular object of having an heir to perpetuate the adopter's name.¹ The substitution of a son of the deceased for spiritual reasons is the essence of the thing and the consequent devolution of property a mere accessory to it.² Hence even a pauper can take a boy in adoption.

3. *Who may adopt.*—Every male Hindu may lawfully take a son in adoption provided he is of sound mind and has attained the age of discretion and has no son, grandson or great-grandson, natural or adopted, living at the time of adoption.¹ The existence of a son (grandson or great-grandson) who is disqualified from inheriting and incapable of performing obsequial ceremonies and offering oblations to the manes of the ancestors, is no bar to the taking of a son in adoption, according to the Madras High Court.² The Bombay High Court holds the contrary view.³ The point has not arisen for consideration before the Mysore High Court. Even according to the Madras view, after the Hindu Inheritance (Removal of Disabilities) Act, 1938, came into force in Mysore, such an adoption would be invalid, unless the son (grandson or great-grandson) is and has been from birth a lunatic or idiot. The existence of a son, who has renounced his Hindu religion or is deprived of his caste, is of the same effect as the existence of

Note 2.

¹ *Bal Gangadhar Tilak v. Shrinivas*, 29 I.C. 639 : 39 Bom. 441, 470 P.C.

² Sir James Colville in *Raghunanda v. Brozo Kishoro*, 1 Mad. 69 P.C.; see also *Vijaysangji v. Shivsangji*, 1935 P.C. 95 : 155 I.C. 498.

Note 3.

¹ *Thayammal v. Seshachella*, 10 M.I.A. 429, 434 ; *Sattiraja v. Venkata-swamy*, 40 Mad. 925 [A minor can adopt if he has completed 15 years. Indian Majority Act, 1875, is not applicable to Hindus in matters of Adoption]; *Rangama v. Atchama*, 4 M.I.A. 1 ; *Mohesh v. Taruck*, 20 Cal. 487 P.C.

² *Nagammal v. Shankarappa*, 1931 Mad. 264 : 54 Mad. 576 [case of virulent and incurable leprosy].

³ *Bharmappa v. Ujjangouda*, 1922 Bom. 173 : 46 Bom. 455 ; *Krishnaji v. Raghavendra*, 1942 Bom. 178 (2) : 44 Bom. L.R. 371 [Natural born son being a congenital idiot—father cannot adopt].

a disqualified son, to a person taking another son in adoption.⁴ That natural son will not lose his rights of inheritance to his father.⁵ But it is not clear how and in what proportion the two sons take the inheritance in such a case.

The existence of an illegitimate son is no bar to an adoption.⁶

The fact that the adopter is a bachelor⁷ or a widower⁸ or that his wife does not consent to the adoption⁹ or that she is at the time of adoption pregnant to his knowledge¹⁰ does not prevent him from taking a son in adoption.

Adoption is not in any way inconsistent with the tenets of the Christian faith and the Hindu Law of Adoption is applicable to Hindu converts to Christianity in Mysore.¹¹

A wife cannot adopt a son to her husband in his lifetime without his express consent.¹² After his death she can adopt a son to him if she is properly authorised. In the case of an adoption made after this Act came into force a widow will be presumed to have her husband's authority to adopt, in the absence of an express prohibition by him in writing.¹³ No other female can adopt to any other male. Thus a mother¹⁴ cannot adopt to her son nor a sister to her brother. A married woman or a widow is not competent to take a son in adoption to herself. Such an adoption is wholly void except where the *kritrima* form is allowed

Note 3.

⁴ See Sec. 3, Illustration (e), Act XV of 1938, Appendix IV.

⁵ See Sec. 2, Illustration (c), Act XV of 1938, Appendix IV.

⁶ *Maharaja of Kolhapur v. Sundaram*, 1925 Mad. 497 : 48 Mad. 1.

⁷ *Gopal v. Narayan*, 12 Bom. 329.

⁸ *Chandrasekharadu v. Brahmanna*, (1869) 4 Mad. H.C. 270.

⁹ *Rangama v. Atchama*, (1846) 4 M.I.A. 1 ; *Sundaramma v. Venkatasubbaier*, 1926 Mad. 1203 : 49 Mad. 941.

¹⁰ *Nagabhushanam v. Seshammagaru*, 3 Mad. 180 ; *Daulatram v. Ramlal*, 29 All. 310.

¹¹ *Kiritappa v. Aralappa*, 40 Mysore 267 : 13 Mys. L.J. 302.

¹² *Narayan v. Nana*, (1870) 7 Bom. H.C.A.C. 153.

¹³ *Srinivasarao v. Lakshmanrao*, 42 Mysore 37 : 14 Mys. L.J. 237 ; *Srinivasachar v. Lakshmikantha*, 20 Mys. L.J. 384 [But it is a rebuttable presumption].

¹⁴ *Puttakka v. Lokamma*, 15 Mysore 83 (step-mother).

and confers no legal rights upon the person adopted.¹⁵ A maiden cannot adopt at all.

4. *Adoption by widow*.—A widow has no larger power of adoption than what her husband would have if alive. Thus the existence of a son, natural or adopted, is a bar to an adoption by her also.

Minority.—Even a minor widow may adopt provided she has attained the age of discretion and is able to form an independent judgment in selecting the boy to be adopted.¹ But where the boy to be adopted is named by the husband in the authority to adopt, she can adopt though she has not attained the age of discretion.² Where a minor widow adopted under the authority of her husband and with the assent of her father her natural guardian, her minority was held to be no circumstance invalidating the adoption.³

Unchastity.—An unchaste widow cannot adopt even when specially authorised by her husband,⁴ because unchastity renders her incapable of performing the necessary religious ceremony.⁵ Among Sudras as no religious ceremony is necessary it is held that her unchastity is no bar to a valid adoption.⁶

Remarriage.—After remarriage a widow cannot adopt a son to her first husband.⁷ See also Secs. 5 and 6 of the Mysore Hindu Widow's Remarriage Act.⁸

Note 3.

¹⁵ *Pudum Singh v. Odday Singh*, (1869) 12 M.I.A. 350, 356; *Narendra v. Dinanath*, 36 Cal. 824; *Siddalingamma v. Madappa*, 16 Mysore 159.

Note 4.

¹ *Sattiraju v. Venkataswami*, 40 Mad. 925; *Parvatavva v. Fakirnaik*, 46 Bom. 307; 64 I.C. 899.

² *Mondakini v. Adinath*, 18 Cal. 69.

³ *Nanamma v. Ramiah*, 5 Mys. L.R. 24.

⁴ *Sayamlal v. Saudamini*, 5 Beng. L.R. 362; *Viyyamma v. Suryaprakasa Rao*, 1942 Mad. 379; (1942) 1 M.L.J. 331 [widow living in concubinage].

⁵ *Moniram v. Keri Kolutani*, 5 Cal. 775 P.C.

⁶ *Basvant v. Savitravva*, 1921 Bom. 301; 45 Bom. 459.

⁷ *Fakirappa v. Savitravva*, 1921 Bom. 1; 62 I.C. 318; *Panchappa v. Sanganbasava*, 24 Bom. 89, 94.

See Appendix III.

5. *Who may be authorised to adopt.*—Every Hindu who can himself adopt can authorise his wife to adopt a son to him after his death. Even if he is a member of a joint Hindu family he can give his wife authority to adopt to him.¹ But he cannot authorise his wife to adopt to him in circumstances in which an adoption by himself would have been invalid. Thus an authority to adopt in the event of disagreement between her and the natural born son even if he should be living is invalid. But an authority to adopt if the natural born son should die underage and unmarried is valid.² The authority to adopt can be given to the widow alone and not to any other relative. Even an authority given to his widow conjointly with another person is void and an adoption made in pursuance of such authority is also invalid.³

Though a person cannot give a joint authority to his widow and another to make an adoption, he may direct his widow to adopt with the consent of, or not to adopt without the consent of a specified person. In the former case if it appears from the surrounding circumstances that the consent was to be a condition precedent, as for example where the adoption is intended more for secular than for spiritual reasons, an adoption made without the consent of the specified person will be invalid.⁴ Otherwise if it is a mere direction to consult, she may adopt without consulting such person.⁵ Where a boy to be adopted was to be chosen by four executors, one of whom being the natural father of the testator, himself selected the boy after consulting his co-executors who did not express their disapproval either before or at the time of adoption, the

Note 5.

¹ *Bachoo v. Mankorebai*, 31 Bom. 373 P.C.

² *Raja Vellanki v. Venkatarama*, 1 Mad. 174 P.C.

³ *Amritolal v. Surnomoye*, 27 Cal. 996 P.C.

⁴ *Rajendra Prasad v. Gopal Prasad*, 1930 P.C. 242 : 127 I.C. 743 ; *Radha-mahadeb v. Rajendraprasad*, 1933 Pat. 250 : 149 I.C. 809.

⁵ *Survanarayana v. Venkatramana*, 29 Mad. 382 P.C.; *Surendra v. Sailaji*, 18 Cal. 385.

adoption was held to be valid.⁶ Where the direction is not to adopt without the consent of a specified person, an adoption made without such consent is invalid in every case, whether the specified person be alive or dead at the time of adoption.⁷

Authority to co-widows.—Where a Hindu dies leaving two or more widows, she who is authorised by him can alone make an adoption to him.⁸ If he has expressed no prohibition in writing the senior widow will be presumed, according to Sub Sec. (1) of this section, to have his authority. There is no such presumption of authority in favour of the junior widow.

Where a joint power of adoption is given to two widows, it has been held in Madras that an adoption made by them jointly is not invalid, though the son adopted would *in law* be the son only of the senior widow, who alone has the preferential right to adopt, the junior widow being considered only his step-mother.⁹ In *Narsimha v. Parthasarathy*,¹⁰ their Lordships of the Privy Council left it an open question whether if a power to adopt were given to two or more widows jointly such power would be valid, but they held that even if it were so, it must be exercised by them all and that it could not be exercised after the death of any one of them. Their Lordships also observed that such a power might be supported by custom and might perhaps be interpreted as giving a preferential right of adoption to the senior widow.

Where authority to adopt is given to the widows severally, the senior widow has the prior right to adopt. The junior widow has no right to adopt unless the senior

Note 5.

⁶ *Rattanlal v. Baijnath*, 1937 P.C. 292 : 169 I.C. 902.

⁷ 27 Cal. 996 P.C.; *Bal Gangadhar Tilak v. Shrinivas*, 39 Bom. 441 P.C.

⁸ *Mayne's Hindu Law*, 10th edn., p. 217.

⁹ *Thiruvengalam v. Butchayya*, 1929 Mad. 11 : 52 Mad. 373.

¹⁰ 23 I.C. 166 : 37 Mad. 199, 220 P.C.

widow refuses to adopt.¹¹ A widow cannot adopt when her co-widow has validly adopted and the adopted son is living.¹²

6. *Form of authority*.—The authority to adopt may be given verbally or in writing. If it is in writing it must be registered unless the authority is given under a will.¹ If it is not in writing it should be shown that the authority was given in the presence of relatives or unimpeachable witnesses and with a certain degree of formality and solemnity.² As a minor cannot make a will, if an authority is given in a writing purporting to be his will, the document to be effective must also be registered.³

7. *Authority to be strictly followed*.—A widow authorised to adopt must strictly obey her husband's directions while exercising that power.¹ Thus where she is directed to adopt within a definite period, she cannot adopt after the expiration of that period.² Where she is authorised by her husband to adopt 'if no male or female child should be born to him' she cannot adopt even if a posthumous daughter is born to him.³ But every positive direction contained in an authority to adopt cannot also be read as an implied prohibition of something else. A direction to operate as a prohibition must be explicitly made

Note 5.

¹¹ *Bijoy v. Ranjit*, 38 Cal. 694; *Ranjit Lal v. Bijoy Krishna*, 39 Cal. 582.

¹² *Shivappa v. Rudrava*, 1932 Bom. 410 : 57 Bom. 1.

Note 6.

¹ *Mutsaddilal v. Kundanlal*, 28 All. 377 P.C.; see also *Rawat v. Beni Bahadur*, 1926 P.C. 97 : 98 I.C. 567.

² *Venkatalakshammammanee v. Veeraraje Urs*, 1 Mys. L.R. 128.

³ *Vijayaratnam v. Sudarsana*, 1925 P.C. 196 : 89 I.C. 733.

Note 7.

¹ *Pudum Singh v. Uday Singh*, 12 M.I.A. 350, 356; *Sitabai v. Bapu*, 1921 P.C. 8 : 47 Cal. 1012; *Rajendra Prasad v. Gopal Prasad*, 1930 P.C. 242 : 127 I.C. 743; *Kalawati Debi v. Dhuran Prakash*, 1933 P.C. 71 : 142 I.C. 1.

² *Mutsaddilal v. Kundanlal*, 28 All. 377 P.C.; *Bhupendra Mohan v. Purna Sashi Debi*, 1939 P.C. 222 : 183 I.C. 199.

³ *Bhagwat Koer v. Dhanukdhari*, 53 I.C. 347 : 47 Cal. 466 P.C.

and clearly intended to limit the discretion of the widow for all time and on every occasion on which otherwise after his death she might validly make an adoption to him.⁴ Thus where a widow was authorised to adopt another if the first misbehaved and she adopted another on the death of the first adopted boy, the adoption was held valid.⁵

A widow validly authorised by her husband to adopt, cannot delegate that power to any other person. She is herself a delegate, an agent as it were, and hence she alone may exercise it.

8. *Exercise of authority to adopt—Time limit.*—A widow who is authorised by her husband may or may not adopt even if she is expressly directed to make an adoption. No one can compel her to exercise that power. Her rights in her husband's estate are not in any way affected by her omission or, even refusal to adopt.¹ On the other hand if she exercises that power and adopts a son to him, her rights in her husband's estate are curtailed as provided in Sub Sec. (2) of this section. Her power to adopt is more properly a duty—a moral duty—rather than a right.

There is nothing in any of the Smritis or texts of Hindu Law which lays down any limit of time for the exercise of the authority conferred on the widow to adopt, the foundation of the Brahminical doctrine of adoption being the paramount duty which every Hindu owes to his ancestors of providing for the continuance of the line for spiritual purposes.² Being a matter of such importance to a

Note 7.

⁴ *Yadao v. Namdeo*, 1922 P.C. 216: 49 Cal. 1; *Krishnaswamy v. Narasimhamurthy*, 9 Mysore 268 F. B.

⁵ *Krishnaswamy v. Narasimhamurthy*, 9 Mysore 268 F.B.; see also *Collector of Madura v. Motoo Ramalinga*, 12 M.I.A. 397, 445.

Note 8.

¹ *Shamavakoo v. Dwarkadas*, 12 Bom. 202; *Mutsaddilal v. Kundanlal*, 28 All. 377 P.C.; *Narayan Iyengar v. Venguammal*, (1938) Mad. 621.

² *Maharaja of Kolhapur v. Sundaram*, 48 Mad. 1; *Amarendra v. Sanatan Singh*, 1933 P.C. 155 : 143 I.C. 441.

Hindu, the right to adopt ought not to be hedged in with any restrictions except perhaps those which are recognised by judicial decisions.³ As observed by Abdul Ghani, J., 'The law of adoption as it stands at present is more the creature of the decision of the courts than of ancient scriptures Smritis or Nibandhas, the courts being influenced both in regard to the validity of an adoption and its consequences on the devolution of property by considerations of equity, justice and good conscience.'⁴ If any time limit is fixed for the exercise of the authority by judicial decisions, it has reference more to general considerations of expediency than to any known principles of Hindu Law.⁵ On the other hand if no time limit to the exercise of the authority is recognised and other restrictions now existing on the authority are removed, the property of a Hindu family cannot be dealt with to convey a good title so long as there is some widow alive in the family.⁶ The question is however different where the authority to adopt specifies the time limit, in which case an adoption not made within that time will be invalid.⁷

9. *Adoption by widow without husband's authority.*—In Mysore a widow may adopt a son to her husband even though she has not his express authority. She can make an adoption after obtaining the consent of her husband's sapindas.¹ These are two different forms of adoption, and a widow who bases her right to adopt on her husband's authority cannot on failure to establish it, seek to support it on the ground of consent of the sapindas.² Sub Sec. (1)

Note 8.

³ *Dasappa v. Seshagirirao*, 43 Mysore 438 : 16 Mys. L.J. 301, 315 ; see also *Nanjammallee v. Devaraja Urs*, 3 Mys. L.R. 174.

⁴ 16 Mys. L.J. 301, 316.

⁵ *Maharaja of Kolhapur v. Sundaram*, 48 Mad. 1.

⁶ 16 Mys. L.J. 301, 317. But *cf.* (1942) 2 M.L.J. 678 F.B.

⁷ *Mutsaddilal v. Kundanlal*, 28 All. 377 P.C. ; *Bhupendra Mohan v. Poorna Sashi Debi*, 1939 P.C. 222 : 183 I.C. 199.

Note 9.

¹ *Rudrappa v. Veerabharappa*, 16 Mysore 227.

² *Eriah v. Eariyah*, 34 Mysore 195 : 7 Mys. L.J. 270 ; see also *Srinivasachar v. Lakshmikantha*, 20 Mys. L.J. 384.

of this section being only an amendment of procedure, does not make it unnecessary for a widow who wishes to make an adoption, to have either the authority of her husband or the consent of his sapindas.³ She has no residuary power to adopt of her own volition.⁴ In the case of an adoption made by a widow after this Act came into force, in the absence of an express prohibition in writing by the husband the court shall presume that she has the authority until it is shown that she has not. This is a rebuttable presumption.^{4a} The substantive law on the point is not altered in any way by Sub Sec. (1). A widow may therefore adopt without the authority from her husband, subject to the following conditions.---

(1) She cannot adopt if there is an express or implied prohibition by her husband.⁵ A prohibition ought not to be inferred from the mere fact that the husband and wife were living separate.⁶ A mere refusal by him to adopt will not also amount to such a prohibition.⁷ A prohibition can be inferred only if the court is able to say with confidence that what the husband had said or done shows that he would have prohibited an adoption either in any circumstance or in the circumstances existing at the material time if he could have foreseen them. If the court can say no more than that he might have or even that he probably would have prohibited an adoption in any circumstance or in those particular circumstances, that is not enough.⁸

Note 9.

³ *Srinivasarao v. Lakshmanrao*, 42 Mysore 37 : 14 Mys. L.J. 237, 243.

⁴ *Balasubramanva v. Subbayya*, 1938 P.C. 34 : 172 I.C. 724 ; *Rudrappa v. Veerabhadrappa*, 16 Mysore 227 [an adoption so made cannot be validated even on the principle of *factum valet*].

^{4a} 42 Mys. 37 ; 20 Mys. L.J. 384.

⁵ *Malgouda v. Babaji*, 37 Bom. 107 : 17 I.C. 746.

⁶ *Collector of Madura, v. Motoo Ramalinga*, 12 M.I.A. 397 ; *Muthuswamy v. Pulavaratal*, 1922 Mad. 106 : 45 Mad. 266.

⁷ *Sitabai v. Govinda Rao*, 1927 Bom. 151 : 51 Bom. 217 ; see also *Vithagouda v. Secretary of State*, 1932 Bom. 442 : 140 I.C. 242.

⁸ *Krishnawa v. Ramagouda*, 1941 Bom. 350 : 43 Bom. L.R. 483.

(2) If the husband was separate at the time of his death, she may adopt with the consent of her father-in-law. The consent given by him becomes inoperative on his death.⁹ Where the father-in-law is dead, she must obtain the consent of a substantial majority of her husband's nearest sapindas who are capable of forming an intelligent and honest judgment in the matter.¹⁰ The absence of consent of the nearest sapindas cannot be made good by the authorisation of distant relatives.¹¹ Generally the consent of the nearest sapindas must be asked and if it is not asked it is no excuse to say that they would certainly have refused.¹² In short there must be such proof of assent of the sapindas as is sufficient to support the inference that the widow made the adoption 'not from capricious or corrupt motives or in order to defeat the interest of this or that sapinda, but upon a fair consideration, by what may be called a family council, of the expediency of substituting an heir by adoption to the deceased husband'.¹³ A sapinda who has duly given his consent cannot arbitrarily or capriciously withdraw it.¹⁴

Where both the agnates and the cognates of the husband coexist, the agnates must certainly be consulted in preference to the cognates. In such a case where the consent of the nearest agnates is received by the widow, the fact that a major son of her daughter was not consulted or did not consent would not invalidate the adoption.¹⁵ In *Balasubramanya v. Subbayya*,¹⁶ where there were no agnates of the husband at the time of adoption whose assent could be

Note 9.

⁹ *Sanganbasappa v. Ruaramma*, 18 Mysore 56.

¹⁰ *Adusumilli v. Adusumilli*, 56 I.C. 391 : 43 Mad. 650 P.C.

¹¹ *Veerabasavaraju v. Balasurya*, 48 I.C. 706 : 41 Mad. 998 P.C.

¹² *Venkamma v. Subramaniam*, 30 Mad. 50 P.C.

¹³ *Raja Veilanki v. Venkatarama*, 1 Mad. 174, 190 P.C.; *Collector of Maduva v. Motoo Ramalinga*, 12 M.I.A. 397.

¹⁴ *Sivasuryanarayana v. Adinarayana*, 1937 Mad. 110 : 166 I.C. 339 F.B.

¹⁵ *Seshamma v. Venkatanarasimharao*, 1940 Mad. 356 : 188 I.C. 250 F.B.

¹⁶ 1938 P.C. 34 : 172 I.C. 724.

sought, it was urged that there would be a residuary power in the widow to adopt of her own volition; but their Lordships of the Privy Council said that they were not prepared to hold on the authorities that the only kinsmen whose assent need be asked are the agnates. In the absence of agnates the widow can adopt with the consent of the nearest cognate reversioner.¹⁷

(3) If the husband was a member of a joint family at his death, the widow must obtain the consent of her father-in-law if he is alive. If he is dead, she must obtain the consent of all the other coparceners in whom her husband's interest has vested by survivorship.¹⁸ Where the only other surviving coparcener is insane, the widow can adopt a son to her husband with the assent of the nearest divided sapindas.¹⁹

(4) An adoption made by the senior widow with the consent of the sapindas is valid, though made without the consent of the junior widow.²⁰ But an adoption made by the junior widow without the consent of the senior widow is invalid, though made with the consent of her husband's sapindas.²¹

(5) The consent of the sapindas must not have been obtained by misrepresentation.²² Nor should it have been given by them from interested motives²³ or purchased by the widow for money or other considerations.²⁴ But it is held to be not improper for a coparcener to give his

Note 9.

¹⁷ *Kesar Singh v. Secretary of State*, 1926 Mad. 881 : 49 Mad. 652 (father's sister's son).

¹⁸ *Collector of Madura v. Mootoo Ramalinga*, 12 M.I.A. 397, 441 ; see also *Narayanaswamy v. Mangammal*, 28 Mad. 315.

¹⁹ *Chellathammal v. Kalitheertha Pillai*, 1942 Mad. 606.

²⁰ 28 Mad. 315.

²¹ *Raja Venkatappa v. Rengarao*, 39 Mad. 772 : 30 I.C. 106 ; *Muthuswamy v. Pulavaratal*, 1922 Mad. 106 : 45 Mad. 266.

²² *Venkamma v. Subramanian*, 30 Mad. 50 P.C.

²³ *Karunabdhhi v. Gopala*, 2 Mad. 270 P.C.

²⁴ *Danakati v. Balasundra*, 36 Mad. 19 : 18 I.C. 989.

consent to the adoption on condition that his own share should not be reduced by the adoption.²⁵

Nor can a sapinda refuse his consent to an adoption arbitrarily or improperly. Any evasion or undue delay on his part in replying to her request will be tantamount to an improper refusal.²⁶ Nor can he justify his refusal on the ground that the proposed adoption is too late or that it is not necessary or that the widow is likely to enter into an ante-adoption agreement.²⁷ Where the nearest sapinda refuses his consent and the widow adopts in spite of that, it must be shown by the widow, to validate the adoption, that the refusal of the sapinda was from an improper motive.²⁸ Where the majority have withheld their consent because of improper motive, the consent of the others will be sufficient.²⁹

(6) The authority to adopt can only be given by the husband to his wife. But where an only son authorises his widowed mother to adopt a son to his father in the event of his (son's) death, the widow can validly adopt a son to her husband. In such a case the son's authority operates as a consent of the nearest sapinda to her adoption, though he will not be living at the time of the adoption and the consent of other sapindas then living is not obtained.³⁰

(7) Once she is fortified with the consent of the nearest sapindas, her power to adopt is coextensive with that of her husband. She may even adopt an only son just as her husband could have done.³¹ Her motive in making an

Note 9.

²⁵ *Srinivasa v. Rangaswamy*, 30 Mad. 450.

²⁶ *Murahari v. Sumitramma*, 1934 Mad. 191 : 57 Mad. 411 ; *Hariramayya v. Venkatachalapathi*, (1936) 70 M.L.J. 619 ; *Chellathamm v. Kalitheertha Pillai*, 1942 Mad. 606 : [Refusal based on untrue allegation is improper].

²⁷ *Krishnayya Rao v. Surya Rao*, 1935 P.C. 190 : 69 M.L.J. 388.

²⁸ *Vajjula v. Gopalakrishnamma*, 1940 Mad. 950 : (1940) 1 M.L.J. 779.

²⁹ 1942 Mad. 606 [Assent of two out of six held sufficient].

³⁰ *Annapurnamma v. Appayya*, 1929 Mad. 577 : 52 Mad. 620 F.B.

³¹ *Sri Balusu v. Sri Balusu*, 22 Mad. 398, 408 P.C.

adoption (for instance, to spite the junior widow), is quite irrelevant and does not affect the validity of the adoption.³²

(8) Whereas a widow authorised by her husband to adopt can do so at her discretion subject only to the time limit fixed by judicial decisions, a widow claiming to adopt under a power derived by the consent of her husband's sapindas may do so only within a reasonable time after the consent is given and not after a considerable lapse of time when circumstances of the family may have materially changed.³³

10. *Validity of adoption and rule of divesting*.—At the date of adoption by a widow to her deceased husband his estate may have vested in her or in some one else be it another coparcener of the family or an outsider claiming by reversion or by inheritance. It may even be that his estate is lost to the family by adverse possession or he might have left no estate at all. The adopted son will not in all cases be entitled to divest his adoptive father's estate in whosoever's hands it might then be. The question has often arisen whether the validity of an adoption is in any way dependent upon the vesting of his adoptive father's estate in him? In other words, is the validity of an adoption by a widow affected by the question whom it might divest of property? Some observations of the Privy Council¹ in this connection, were interpreted in a few British Indian decisions² to mean that one depended upon the other.

Note 9.

³² *Kanakaratnam v. Narasimharao*, 1941 Mad. 937 : (1941) 2 M.L.J. 803 F.B.

³³ *Vasireddi Venkayya v. Sriramulu*, 1941 Mad. 935 : (1941) 2 M.L.J. 798 F.B.

Note 10.

¹ *Mst. Blooban Mayee v. Ram Kishore*, (1865) 10 M.I.A. 279; *Raja Vellanki v. Venkatarama*, 1 Mad. 174 P.C.; *Paṭmakumari v. Court of Wards*, 8 Cal. 302 P.C.; *Thayammal v. Venkatrama*, 10 Mad. 205 P.C.

² *Ramkrishna v. Skama Rao*, 26 Bom. 526 F.B.; *Anandi Bai v. Kashi Bai*, 28 Bom. 461; but see observations of Reilly, J., in *Sukh Deo Doss v. Choti Bibi*, 1928 Mad. 118; *Panyam v. Ramalakshamma*, 1932 Mad. 227 : 55 Mad. 581.

The position was cleared up by their Lordships themselves in *Amarendra v. Sanatan Singh*,³ where they stated that the validity of an adoption is *not affected* by the question whom it might divest of property. Their Lordships emphasised that the foundation of the Brahminical doctrine of adoption is the religious side of it, namely the paramount duty which every Hindu owes to his ancestors, and observed that the validity of an adoption must be determined by spiritual considerations rather than temporal, the consequent devolution of property on the adopted son being merely accessory to it and altogether a secondary consideration.⁴ Accepting the religious in preference to the temporal aspect of adoption, Abdul Ghani, J., in a case where a widow of a coparcener adopted a son to him after the death of the sole-surviving coparcener, observed: "It certainly appears to be desirable to accept the religious theory in relation to the validity of an adoption, not only on the ground that the adoption provides for the salvation of the souls of an ancestor, but also on the ground that the adoptive father may have left self-acquired property and the mother may have property of her own to endow the adopted son with. There may be cases where such an adoption though not affecting the rights in the property at the time would affect reversionary interest later on and the adopted son may succeed to some other property as heir to a distant relation by adoption."⁵ Vesting or divesting of property is therefore no test by itself of the validity of an adoption.⁶

Thus the validity of an adoption cannot be impeached simply because it would defeat the estate⁷ or on the ground

Note 10.

³ 1933 P.C. 155 : 143 I.C. 441.

⁴ See also Sir James Colville, in *Raghunanda v. Brozo Kishoro*, 1 Mad. 69 P.C.

⁵ *Dasappa v. Seshagirirao*, 43 Mysore 438 : 16 Mys. L.J. 301, 319.

⁶ See also *Bheemabai v. Gurunathgouda*, 1933 P.C. 1 : 57 Bom. 157.

⁷ 1933 P.C. 155 ; *Vijay Sinhji v. Shivasinji*, 1935 P.C. 95 : 155 I.C. 493 ; *Pratap Singh v. Agarsingji*, 50 I.C. 457 : 43 Bom. 778 P.C.

that it would not defeat the estate⁸ vested in some person other than the adopting widow. Where the adoptive father died a member of a joint family, an adoption made by his widow which is otherwise valid cannot be impeached on the ground that the surviving coparceners having effected a partition among themselves before the adoption, the adopted son cannot divest the estate of his adoptive father in the hands of the surviving coparceners.⁹ Nor can its validity be impeached merely on the ground that the adoptive father's estate has passed by succession from the sole-surviving coparcener to his heirs such as his widow.¹⁰ In such cases even though the adoption is otherwise valid it will not have the effect of divesting the estate which has already vested in the collateral heirs of the adoptive father.¹¹ Further, in view of the considerable enlargement of a widow's power to adopt effected by Sub Sec. (1) of this section, it may reasonably be presumed as observed by Abdul Ghani, J., that such an extension of authority to adopt would not have been conceded if adoption had the consequence of divesting the estate which had already vested in another, particularly a collateral heir after the extinction of the coparcenary.¹²

The subject-matter dealt with here is closely connected with that of the termination of a widow's power to adopt which is considered below.

11. *Termination of a widow's power to adopt.*—Vesting or divesting of estate being no longer of importance and

Note 10.

⁸ 16 Mys. L.J. 301 ; *Sankaramma v. Krishna Rao*, 43 Mysore 415 : 16 Mys. L.J. 376, 392 ; *Balu Sakharani v. Sambhaji*, 1937 Bom. 279 F.B. ; *Krishnaji v. Rajaram*, 1938 Bom. 383 F.B. ; *Mst. Droupadi v. Vikram*, 1938 Nag. 423 : (1939) Nag. 88.

⁹ 16 Mys. L.J. 376 ; *cf.* (1942) 2 M.L.J. 678 F.B. [The adopted son can re-open the partition and get a share].

¹⁰ 16 Mys. L.J. 301 ; *Honnnavalli v. Honnavalli*, 13 Mys. L.R. 39.

¹¹ 13 Mys. L.R. 39 ; *Rudramma v. Sanganasappa*, 17 Mysore 145 ; *Rudramma v. Sanganasappa*, 18 Mysore 56.

¹² 16 Mys. L.J. 301, 307.

the duty of a Hindu to provide for the continuance of the line for spiritual purposes being the essence of the doctrine of adoption, it follows that whether a person dies as a member of a joint family or as a divided member, the termination or continuance of his widow's power to make an adoption will be ascertained by the same set of rules and considerations.

A widow's power to adopt is not dependent on her inheriting as a Hindu female owner, her husband's estate. She can exercise that power so long as it is not exhausted or extinguished, even though the property was not vested in her.¹ The vesting of the estate on the death of the last holder in some one other than the adopting widow, be it another coparcener of the joint family or an outsider claiming by reverter or by inheritance, cannot be in itself the test of the continuance or extinction of the power of adoption.² But the true test is to see whether the duty of providing for the continuance of the line of the ancestors has been performed and the means provided for its fulfilment spent. One way of providing for it is to pass it on to a new generation which is itself capable of the continuance. As observed by the Privy Council, where the duty of providing for the continuance of the line for spiritual purposes which was upon the father and was laid by him conditionally upon the mother has been assumed by the son and by him passed on to a grandson or to the son's widow, the mother's power is gone. But if the son die himself sonless and unmarried, the duty will still be on the mother and the power in her which was necessarily suspended during the son's lifetime will revive.² The son cannot be deemed to have assumed the duty on himself simply because he has attained

Note 11.

¹ *Bachoo v. Mankorebai*, 31 Bom. 373 P.C.; *Pratapsingh v. Agarsingji*, 43 Bom. 778 P.C.; *Hiralal v. Piirilal*, 1928 All. 505 : 51 All. 54; *Bhimabai v. Gurunath Gouda*, 1933 P.C. 1; see also *Aiyangouda v. Gadigeppa*, 1940 Bom. 200 : 188 I.C. 873.

² *Amarendra v. Sanatan Singh*, 1933 P.C. 155.

the age of discretion or even of majority and could adopt a son to himself if he chooses. He must in addition have attained 'ceremonial competence' or 'full legal capacity to continue the line' which will be by his own son (natural or adopted) or his own widow surviving him. Thus where the son died a major but unmarried³ or died without leaving any issue his wife having predeceased him,⁴ it was held that the mother's power of adoption had not terminated. If the son dies leaving his own son or his own widow, the widow's (that is, his mother's) power to adopt comes to an end at his death and she cannot thereafter exercise it, though she may have been expressly authorised by her husband to adopt in those circumstances.⁵ But if the son dies leaving only a daughter, it is held in Bombay that the widow's power to adopt does not come to an end.⁶

If the son is a step-son of the widow having the power to adopt and dies leaving his own mother (or the mother having predeceased him, grandmother) it was held (before Amarendra's case) that the adoption by the widow was invalid.⁷ But as the son's mother or grandmother cannot discharge the duty of providing for the continuance of the line, these decisions cannot be supported.⁸

Before Amarendra's case, it was also held that once the power to adopt comes to an end, it becomes extinguished for ever and it does not revive even when on the death of the son's nearer heirs, the estate reverts to the widow and

Note 11.

³ 1933 P.C. 155 ; *Narhar v. Balwant*, 48 Bom. 559 : 1924 Bom. 437 ; *Pattu Achi v. Rajagopala Pillai*, 1941 Mad. 699 : (1941) 2 M.L.J. 134.

⁴ *Virabhai v. Bai Heraba*, 27 Bom. 492 P.C. ; *Madana Mohana v. Purushothama*, 41 Mad. 855 P.C. ; *Tripuramba v. Venkataratnam*, 46 Mad. 423 ; *Shasanka Bhusan v. Narayan*, 1935 Cal. 716 : 63 Cal. 385.

⁵ *Mst. Bhooban Moyee v. Ram Kishore*, 10 M.I.A. 279 ; *Thayammal v. Venkatrama*, 10 Mad. 205 P.C. ; *Tara Charn v. Suresh*, 17 Cal. 122 P.C. ; *Ramkrishna v. Shama Rao*, 26 Bom. 526 F.B. ; *Kala v. Mada*, 18 Mys. L.R. 18.

⁶ *Channabasappa v. Madiwalappa*, 1937 Bom. 337 : 170 I.C. 999.

⁷ *Anandi Bai v. Kashibai*, 28 Bom. 461 ; *Faizuddin v. Tincouri*, 22 Cal. 565.

⁸ *Mulla's Hindu Law*, 9th edn., p. 534.

becomes vested in her.⁹ In view of the effective severance of all connection between the spiritual aspect and the temporal consequences of adoption and the emphasis laid by the recent judicial pronouncements on the well-established doctrine as to the religious efficacy of sonship, it is submitted that this view requires reconsideration. It is poor consolation for a widow, whose sole concern is in the salvation of her husband's soul, to be told that she can no longer attempt to save it. Granting that her husband's soul has already received all the spiritual benefit needed for its salvation, is there no need of a son for providing for the salvation of her own soul?

Subject to the above provisions a widow having the requisite authority may adopt at any time she pleases unless there is any direction to the contrary.¹⁰

12. *Who may give in adoption.*—Only the parents can lawfully give a boy in adoption.¹ The person who gives must however have attained the age of discretion and must be of sound mind.² A brother cannot give his brother in adoption. A step-mother cannot give her step-son nor a grandfather his grandson in adoption.

Where the father is alive he has the primary right to give in adoption.³ The mother cannot give in adoption without her husband's permission. But she may do so if he has become incapable of giving his consent or if he has renounced all worldly affairs and has become an ascetic. A

Note 11.

⁹ 26 Bom. 526 F.B.; *Krishnarao v. Shankar Rao*, 17 Bom. 164; *Manikya-mala v. Nandakumar*, 33 Cal. 1306.

¹⁰ *Mutsaddilal v. Kundanlal*, 28 All. 377 P.C.; *Nanjammanni v. Devaraj Urs*, 3 Mys. L.R. 174.

Note 12.

¹ *Putlibai v. Mahadu*, 33 Bom. 107; *Siddegowda v. Channappa*, 31 Mysore 143; 4 Mys. L.J. 109.

² *Bireswar v. Ardha Chander*, 19 Cal. 452, 461 P.C.

³ See *Narayanaswamy v. Kuppaswami*, 11 Mad. 43, 47.

widow can give her son in adoption provided there is no express or implied prohibition from her husband.⁴

Delegation of power.—The power to give a boy in adoption belongs exclusively to the parents. That power cannot be delegated to any other person.⁵ But the physical act of giving may be delegated to another because it involves no exercise of discretion.⁶

Renunciation of Hindu Religion.—According to Sec. 2 of the Act for the removal of religious and caste disabilities 1938, no person shall be entitled to retain or to exercise any right peculiar or appropriate only to the religion which he has renounced or from which he has been excluded or to the caste of which he has been deprived. Thus if a Hindu becomes a Musalman, after conversion he will not be able to exercise the right of a Hindu father to give one of his Hindu sons in adoption to a Hindu.⁷

13. *Who may be taken in adoption.*—Subject to the following rules, any person who is a Hindu¹ may be taken or given in adoption:

(i) The person to be adopted must be a male.²

(ii) He must belong to the same caste as his adoptive father. But he need not also belong to the same subdivision of the caste.³ A Brahmin cannot adopt a Kshatriya, Vaisya or a Sudra.

Note 12.

⁴ *Jogesh Chandra v. Nrityakali*, 30 Cal. 965 ; *Raja Mukund Deb v. Sri Jagannath*, 1923 Pat. 423 ; 2 Pat. 469.

⁵ *Bashettiappa v. Shivlingappa*, (1873) 10 B.H.C. 268.

⁶ *Shamsingh v. Shantabai*, 25 Bom. 551.

⁷ 25 Bom. 551 ; Sec. 2, Ill. (f) ; see Appendix IV.

Note 13.

¹ *Kusumkumari v. Satyaranjan*, 30 Cal. 999.

² *Gangabai v. Anant*, 13 Bom. 690.

³ *Shib Dev v. Ram Prasad*, 1925 All. 79 ; 46 All. 637.

(iii) He must not be a boy whose mother the adopting father could not have legally married.⁴ This prohibition does not apply to Sudras.⁵ Even as to the three regenerate classes an adoption though coming within the prohibition under this rule, may be valid if it is recognised by custom. Thus the adoption of a sister's son or a daughter's son⁶ by a Brahmin has been recognised as valid by custom. The basis of the rule being that marriage between agnates is prohibited, wherever the basis is ignored in the most prominent cases namely the sister's son and the daughter's son, it is submitted that the rule must be regarded as destroyed by the exceptions, in all cases where the adopted boy's mother is an agnate of the adopter.⁷

(iv) The adoption must be before the boy is invested with the sacred thread.⁸ But in Bombay even a married person can be taken in adoption.⁹ In Madras if the person to be adopted is of the same gotra as the adopter, the adoption may be made even after the upanayana, provided the adoption is made before marriage.¹⁰ In Mysore a married person cannot be taken in adoption.¹¹

Note 13.

⁴ *Bhagwan Singh v. Bhagwan Singh*, 21 All. 412 P.C.; *Haridas v. Manmathanath*, 1936 Cal. 1 : (1937) 2 Cal. 265 ; see also *Naranappa v. Venkamma*, 20 Mysore 55.

⁵ *Maharaja of Kolhapur v. Sundaram*, 1925 Mad. 497 : 48 Mad. 1 ; *Subrao v. Radha*, 1928 Bom. 295 : 52 Bom. 497.

⁶ *Vaidyanatha v. Appu*, 9 Mad. 44 ; *Ramaswamy Iyengar v. Tirumalachar*, 6 Mysore 7 ; see also *Srinivasa Iyengar v. Venkatachela Iyengar*, 11 Mys. L.R. 102.

⁷ *Mulla's Hindu Law*, 9th edn., p. 542.

⁸ *Gangasahai v. Lekhraj*, 9 All. 253 ; *Raja Mukund Deb v. Sri Jagannath*, 1923 Pat. 423 : 72 I.C. 230 ; *Chandreswar v. Bisheswar*, 1927 Pat. 61 : 5 Pat. 777.

⁹ *Balabai v. Mahadu*, 1924 Bom. 349 : 48 Bom. 387.

¹⁰ *Veeraraghava v. Ramalinga*, 9 Mad. 148 F.B. ; *Pichuvayyan v. Subbayyan*, 13 Mad. 128.

¹¹ *Sivarudrayya v. Koosamma*, 10 Mysore 10 [Lingayats—widower sought to be adopted] ; see also *Lingayya v. Chengammal*, 1925 Mad. 272 : 48 Mad. 407 ; *Jhunka v. Nathu*, 35 All. 263.

Adoption of only son.—The adoption of an only son or of a stranger in preference to a relation is valid.¹²

Eldest son.—An eldest son may be given and taken in adoption. The prohibition in the texts against such an adoption is only dissuasive and not peremptory.¹³

Orphan.—The adoption of an orphan is not valid, there being no one to perform the act of giving the lad which is so essential for a valid adoption.¹⁴ Even the doctrine of *factum valet* cannot be invoked to validate it.¹⁵ Even an adult orphan cannot by giving himself or consenting to his adoption make his adoption good.¹⁶ This is so even among Jains who do not believe in the religious aspect of adoption.¹⁷

Adoption of same boy by two brothers.—A boy adopted by one brother cannot be adopted over again by another brother.¹⁸ In such a case the adoption by each of them is invalid.¹⁹

Illegitimate son.—An illegitimate son cannot be given or taken in adoption.²⁰

14. *Dvyamushyayana or son of two fathers.*—A father giving his son in adoption to another can enter into an agreement with the adoptive father that the boy should be considered to be the son of both of them. The son so adopted is called *Dvyamushyayana*. Such a son inherits

Note 13.

¹² *Srimati Ooma v. Gokulanand*, 3 Cal. 587 P.C. ; *Sri Balusu v. Sri Balusu*, 22 Mad. 398 P.C. ; *Vyas v. Vyav*, 24 Bom. 367.

¹³ *Bhremabayamma v. Lakshmanrao*, 27 Mysore 205.

¹⁴ *Siddegowda v. Channappa*, 31 Mysore 143 ; 4 Mys. L.J. 109 [Lingayat family] ; *Mareyya v. Ramalakshmi*, 44 Mad. 260 ; *Vaithilingam v. Natesa*, 37 Mad. 529.

¹⁵ 31 Mysore 143.

¹⁶ *Maridevanma v. Jinnamma*, 10 Mys. L.R. 384.

¹⁷ 10 Mys. L.R. 384 ; *Dhanraj v. Sonibai*, 1925 P.C. 118 ; 52 Cal. 482 ; *Yamashetti v. Ashok*, 1940 Bom. 391 ; 42 Bom. L.R. 895.

¹⁸ *Thimma v. Siddamma*, 4 Mys. L.R. 88.

¹⁹ *Rajkumar v. Bissessur*, 10 Cal. 688, 696.

²⁰ *Apya Shettya v. Rammakka*, 1941 Bom. 222 ; 43 Bom. L.R. 341.

both in the natural and adoptive families.¹ Similarly relations in both the families inherit his property.²

Where a person gives his only son in adoption to his brother, the adoption must be presumed to be in the *Dvyamushyayana* form, unless a stipulation is proved that the adoption was to be in the ordinary form.³ In Bombay it is held that there is no such presumption and that in every case of a *Dvyamushyayana* adoption there must be an agreement to that effect, which must be proved even if the person adopted was the only son of a brother.⁴

15. *Adoption of illatom son-in-law.*—The practice of taking a son-in-law in so-called adoption or more strictly of making son-in-law *Manavaltana* son is of late occurrence and confined to certain castes.¹ This practice being a departure from ordinary Hindu Law, the person claiming under such an adoption must strictly substantiate his claim.²

The taking of a son-in-law in illatom especially when the father-in-law has no son may be done without the execution of any document or performance of any ceremony, but it cannot be inferred that every son-in-law who becomes an inmate of his father-in-law's house thereby acquires the status of an illatom son-in-law.²

To constitute a person an Illatom a specific agreement is necessary, as an illatom adoption does not of itself confer

Note 14.

¹ *Srimati Ooma v. Gokulanand*, 3 Cal. 587, 598 P.C.

² *Basappa v. Gurulingamma*, 1933 Bom. 137 : 57 Bom. 74 ; *Kantawa v. Sangangowda*, 1942 Bom. 143 : 44 Bom. L.R. 269.

³ See *Mulla's Hindu Law*, 9th edn., p. 543.

⁴ *Lakshmipat Rao v. Venkatesh*, 41 Bom. 315 ; *Huch Rao v. Bhima Rao*, 42 Bom. 277.

Note 15.

¹ *Chowdamma v. Subbaraji Urs*, 9 Mys. L.R. 55 ; *Siddareddy v. Subbamma*, 37 Mysore 320 : 10 Mys. L.J. 352 ; *Subbarao v. Pamireddy*, 1930 Mad. 883 ; *Narayudu v. Venkamma*, (1890) 13 I.C. 866.

² 37 Mysore 320 ; 1930 Mad. 883 ; *Ramamma v. Venkatalakshamma*, 1941 Mad. 735 : (1941) 1 M.L.J. 286.

on the adopted son all the rights and the status of a natural son.³ What his rights should be in regard to the properties of his father-in-law is a matter of agreement and has to be set up and proved in each case.⁴

An illatom son-in-law does not lose his rights in the natural family by reason of his adoption, unless he relinquishes it specifically. Thus where an illatom son-in-law had not relinquished his interest in the natural family it was held that he and his sons had not lost their rights in it.⁵ Even the tie of relationship with his natural family is not severed as in the case of an adoption under Hindu Law, and the members of his natural family would have the same rights in the property acquired by him as they would otherwise have had.⁵

16. *Adoption of daughters by dancing women.*—Adoption of daughters by dancing women is recognised in Hindu Law and is not necessarily illegal. An adoption not primarily effected for an immoral purpose or under circumstances amounting to an offence under the Penal Code is not invalid merely on the ground that it may incidentally lead on to a life of immorality on the part of the adopted.¹ But Bombay and Calcutta hold such an adoption invalid notwithstanding a custom to the contrary, such custom being regarded as immoral.² The adoption of a girl by a woman who had not ostensibly adopted the profession of a dancing girl was held invalid on the ground that she had

Note 15.

³ 37 Mysore 320 ; 13 I.C. 866.

⁴ 9 Mys. L.R. 55 ; 37 Mysore 320; *Nagireddi v. Nanjundappa*, 1940 Mad. 761 : (1940) 2 M.L.J. 30.

⁵ *Muniamma v. Munivenkatappa*, 7 Mys. L. J. 138, 141.

Note 16.

¹ *Papayya v. Alameli*, 19 Mysore 13 ; *Venku v. Mahalinga*, 11 Mad. 393 ; *Muthukannu v. Paramasammi*, 12 Mad. 214 ; but see *Guddati v. Gunapati*, 23 Mad. L.J. 493 : 17 I.C. 422.

² *Hira v. Radha*, 37 Bom. 116 ; *Ghasiti v. Umrao Jan*, (1893) 20 I.A. 193, 201.

not been proved to be competent either by law or by custom to make a valid adoption.³

No particular ceremonies are necessary for adoption among dancing girls. Mere recognition is sufficient.⁴ The degradation of a woman in consequence of her unchastity does not in law entail a cessation of the tie which connects her to her kindred by blood or marriage and therefore these are not disqualified from taking as heirs the property left by such a woman. There can be no severance of an originally existing tie of kindred between a kept woman and her offspring by an irregular union, nor does the subsequent adoption of a virtuous mode of life by such offspring operate to sever the natural tie.⁴

17. *The act of giving and receiving.*—The physical acts of giving and receiving the boy in adoption are indispensable essentials for the validity of an adoption, and a mere intention to adopt is not sufficient to give rise to the relation.¹ The law does not accept any substitute for it. Thus there cannot be a valid adoption according to the Hindu Law by the mere execution of a deed of adoption.² But where a deed of adoption is executed and it contains an admission that a person alleged to be adopted had been taken in adoption in the shastraic form, such an admission should be given its full weight unless it is established by the party denying the adoption that the admission was untrue or was made by mistake, fraud or under circumstances which vitiate that admission.³ As observed by Nageswara Iyer, J., the admission of an adoption in a deed amounts to an admission both of the fact and of the validity of the

Note 16.

³ *Gowramma v. Puttavva*, 22 Mysore 193.

⁴ *Papayya v. Alamelu*, 19 Mysore 13.

Note 17.

¹ *Lakshmikantappa v. Yamunavva*, 13 Mysore 122.

² *Shoshinath v. Krishnasundari*, 6 Cal. 381, 388 P.C. ; *Subbarayappa v. Papiiah*, 44 Mysore 124 : 17 Mys. L.J. 152.

³ 44 Mysore 124 ; *Chandra Kunwar v. Narpat Singh*, 29 All. 184 P.C.

adoption.⁴ The physical acts of giving and receiving are necessary not only in the case of the twice born classes but also in the case of Sudras⁵ and Jains.⁶ It is however not necessary that the adoptive father or mother should make a declaration of acceptance of the child in adoption in order to make the adoption valid.⁷

Though the power or right to give a son in adoption cannot be delegated to another, the father or mother may authorise another person to perform the physical act of giving the son in adoption to a named person.⁸

18. *Ceremony of Dattahomam*.—Dattahomam is the sacrifice of the burning of clarified butter which is offered as a sacrifice by fire by way of religious propitiation or oblation.¹ In the case of the twice born classes, where the son to be adopted is of the same gotra as the adoptive father, Dattahomam is not essential.² There is a conflict of opinion as to whether Dattahomam is necessary in other cases. In Bombay it is held necessary.³ In Allahabad, where the boy to be adopted is a brother's son or a daughter's son mere giving and taking is held sufficient.⁴ As to the Madras view, see the cases below.⁵

Note 17.

⁴ 44 Mysore 124 : 17 Mys. L.J. 152.

⁵ 6 Cal. 381 P.C.; *Siddegowda v. Chennappa*, 31 Mysore 143.

⁶ *Maridevamma v. Jinnamma*, 10 Mys. L.R. 384.

⁷ *Ghissai Ram v. Bareylal*, 1942 Oudh, 490.

⁸ *Bashettiappa v. Shivlingappa*, (1873) 10 Bom. H.C. 268; *Shamsingh v. Shantabai*, 25 Bom. 551.

Note 18.

¹ *Bal Gangadhar Tilak v. Shrinivas*, 29 I.C. 639 : 39 Bom. 441 P.C.

² 39 Bom. 441 P.C.; *Vedavalli v. Mangamma*, 27 Mad. 538; *Haridas v. Narayandas*, 1940 Bom. 181 : 188 I.C. 545.

³ 1940 Bom. 181; *Govindaprasad v. Rindabai*, 1925 Bom. 289 : 49 Bom. 515.

⁴ *Atma Ram v. Madho Rao*, 6 All. 276 F.B.

⁵ *Govindayyar v. Doreswami*, 11 Mad. 5, 9 F.B.; *Subbarayar v. Subbammal*, 21 Mad. 497; *Saminatha v. Vageesan*, 1939 Mad. 849 : (1940) Mad. 89 [oral adoption with corporeal delivery only of a daughter's son].

The Hindu Law does not require that there shall be a formal ceremony when the boy is given and accepted. For a valid adoption all that the law requires is that the natural father shall be asked by the adoptive parent to give his son in adoption, that the boy shall be handed over and taken for this purpose, and that the adoption ceremony shall be performed when the parties belong to the twice born class.⁶ Dattahomam may be performed at any time after the physical act of giving and receiving.⁷ Thus where the parents delivered the boy and the adopter accepted him, the mere fact that the formal celebration of the event by caste dinners and the like was postponed till a later day was held immaterial and would not affect the validity of the adoption.⁸ The Dattahomam when performed will relate back to the prior giving and receiving.⁹ That the natural parents or the adoptive father died during the interval is immaterial.¹⁰

19. *Consideration for adoption.*—A person may give his son in adoption after receiving a consideration for the same. But a promise to pay the consideration is not enforceable in law.¹

20. *Renunciation by adopted son of rights of inheritance.*—An adoption once validly made cannot be cancelled by any party thereto.¹ Nor can the adopted son renounce his status as such and return to his family of birth. However he can renounce his rights of inheritance in the

Note 18.

⁶ *Muthuvayyengar v. Thiruvengadammal*, 1942 Mad. 395.

⁷ 21 Mad. 497 ; *Venkata v. Subhadra*, 7 Mad. 548, 550 ; *Seetharamamma v. Suryanarayana*, 1926 Mad. 1184 : 49 Mad. 969.

⁸ *Siddegowda v. Chennappa*, 31 Mysore 143 : 4 Mys. L.J. 109 ; *Krishnamurthi v. Hanumantha Rao*, 6 Mys. L.J. 125.

⁹ *Haridas v. Narayandas*, 1940 Bom. 181.

¹⁰ 4 Mys. L.J. 109 ; 6 Mys. L.J. 125 ; 21 Mad. 497 ; 1942 Mad. 395.

Note 19.

¹ *Murugappa v. Nagappa*, 29 Mad. 161 ; *Narayan v. Gopala Rao*, 1922 Bom. 382 : 46 Bom. 908.

Note 20.

¹ *Bhoopathi Nath v. Basanta Kumaree*, 1936 Cal. 556 : 63 Cal. 1098.

adoptive family, in which case the inheritance would go to the next heir.²

21. *The doctrine of factum valet.*—It is a doctrine of Hindu Law that ‘a fact cannot be altered by a hundred texts’. Where a fact is accomplished, in other words, where an act is done and finally completed, though it may be in contravention of a hundred directory texts, the fact will stand, and the act will be deemed to be legal and binding. But it is otherwise where an act is done in contravention of texts which are in their nature mandatory. As to which is a mandatory text and which is merely directory has to be determined by the Hindu rules of interpretation namely Mimamsa.

Those rules are considered as directory which deal with questions of formalities ceremonies and such other matters as do not affect the essence of the adoption, but relate only to the *modus operandi* of the adoption. But the texts which relate to the capacity to give, the capacity to take and the capacity to be the subject of adoption are considered as mandatory. Hence in an adoption which has taken place, if there is an absence of those elements which the law lays down as essential for the validity of an adoption, the adoption must be held void *ab initio* and cannot be supported on the ground of *factum valet*.¹ Thus the adoption of an orphan cannot be validated by the doctrine of *factum valet* because an orphan cannot be validly given in adoption.² An adoption by a widow without her husband's authority and without the consent of the sapindas cannot be validated by this doctrine.³ But the

Note 20.

² *Mahadu v. Bayaji*, 19 Bom. 239 ; *Lunkern v. Birji*, 1931 Cal. 219.

Note 21.

¹ *Rudrappa v. Veerabhadrapa*, 16 Mysore 227 ; *Ganga v. Lekhraj*, 9 All. 253 ; *Sri Balusu v. Sri Balusu*, 22 Mad. 398 P.C.

² *Siddegowda v. Chennappa*, 31 Mysore 143 ; 4 Mys. L.J. 109 ; *Mari-devanuma v. Jinnamma*, 10 Mys. L.R. 384.

³ 16 Mysore 227 ; *Balasubramanya v. Subbayya*, 1938 P.C. 34.

adoption of an only son or the eldest son when actually completed cannot be questioned because the prohibition in the texts against such an adoption is only dissuasive and not peremptory.⁴

22. *Who is the adoptive mother.*—Where an adoption is made by a widow to her husband, she will be the adoptive mother and her husband though dead will be the adoptive father. Where there are several co-widows, the senior widow as a rule has a prior right to adopt and when she adopts, she will be the adoptive mother. In the case of a joint authority to co-widows the adoption will be presumed to be made by the senior widow as the adoptive mother the junior widow being considered the step-mother.¹

Where a Hindu takes a son in adoption, his wife if living at that date will be the adoptive mother, not because she receives the boy in adoption but because she is the wife of the adopter. In Madras it is held that the adopter's wife will be deemed the adoptive mother whether the adoption is made against her will or after her death, the reason being that otherwise the adopted son would have to be motherless,² though in a case like that of a bachelor taking a son in adoption even the fiction will fail to find the adopted son a mother.

In Mysore the question was considered recently in a case where the adopted son claimed also to be the son of the adopter's wife who had been formally discarded by her husband (the adopter) long before the adoption and the learned Judges held that that relationship could not be claimed by the adopted son.³ Delivering the judgment

Note 21.

⁴ 22 Mad. 398 P.C.; *Bheemabayamma v. Lakshman Rao*, 27 Mysore 205.

Note 22.

¹ *Thiruvengalam v. Butchayya*, 1929 Mad. 11 : 52 Mad. 373.

² *Sundaramma v. Venkatasubba Iyer*, 1926 Mad. 1203 : 49 Mad. 941 ; *Sountherapandyan v. Periaveerathevan*, 1933 Mad. 500 : 56 Mad. 759 F.B.

³ *Srinivasa Iyengar v. Amrithavalliammal*, 44 Mysore 339.

in the case Nageswara Iyer, J., observes: ‘unless the texts on the subject force one to that result, we do not see why the courts should heap fictions upon fictions and find out a mother for a person who by adoption becomes in the circumstances a motherless boy..... The analogy that an adoption made by a widow to her husband dates back to the time when the husband died has no applicability to a case of this sort, as there the adoption is made to the husband by his authority express or implied.’⁴ Shastri G. Sarkar also holds the same view.⁵ It may be noted that so far as the right of inheritance is concerned, according to Sec. 4 (6) of this Act every reference to the son of a female relative in that section shall be read as excluding a son adopted after the death of such female relative. Hence where the wife of the adopter is dead at the date of adoption, the adopted son is not entitled to inherit as such to the relations in her father’s family, nor can those relations inherit to the adopted son. .

23. *Results of a valid adoption.*—(1) Adoption completely transfers the adopted boy from his natural family into the adoptive family as regards legal relationship. The adopted boy ceases to be a sapinda of his former relations and *a fortiori* a gotraja sapinda of any of them.¹

The adopted boy will have the same rights and privileges in the adoptive family as a natural born son,² except (i) as regards marriage within prohibited degrees in the natural family, (ii) where a son is born to the adoptive father thereafter and (iii) where he has been adopted by a

Note 22.

⁴ 17 Mys. L.J. 422, 435 : 44 Mysore 339.

⁵ See Shastri G. Sarkar’s “*The Hindu Law of Adoption*,” : see also Mayne’s *Hindu Law*, 9th edn., p. 258.

Note 23.

¹ *Nagindas v. Bachoo*, 40 Bom. 270 P.C.; *Harihar Pratap v. Bajrang Bahadur*, 1937 P.C. 242 : 169 I.C. 551.

² 40 Bom. 270 P.C.; *Pratapsingh v. Agarsingji*, 50 I.C. 457 : 43 Bom. 778 P.C. ; *Maharaja of Kolhapur v. Sundaram*, 48 Mad. 1.

disqualified heir.³ He is entitled to inherit to his relations in the adoptive family and conversely they can inherit to him.⁴ The guardianship of an adopted son who is a minor passes on his adoption from his natural parents to his adoptive parents.⁵

(2) Though adoption transfers him to the adoptive family it does not sever the tie of physical blood relationship between him and the members of his natural family.⁶ Hence he cannot marry in his natural family within the prohibited degree nor can he adopt from that family a boy whom he could not have adopted if he had remained in that family.⁷

(3) A son validly adopted loses all rights in his natural family.⁸ He cannot claim any share in the coparcenary property of his natural family nor can he claim to inherit to his natural father or other relations,⁹ nor can his natural relations claim to succeed to his estate in the adoptive family.¹⁰ These results are based on the following text of Manu: 'An adopted son shall never take the family (name) and the estate of his natural father; the funeral cake follows the family (name) and the estate, the funeral offerings of him who gives (his son in adoption) cease (as far as that son is concerned)' [verse 142].

Adoption does not divest any property which has already vested in the adopted son at the time of adoption.¹¹ Thus a person by adoption will not lose his right in the

Note 23.

³ See *Mitakshara*, Chap. II, Sec. 10, para 11.

⁴ *Padamkumari v. Court of Wards*, 8 Cal. 302 P.C.; *Gangadhar v. Hiralal*, 43 Cal. 944 : 34 I.C. 10.

⁵ *Sreenarain v. Kishen*, (1873) 11 Beng. L.R. 171 P.C.; *Nirvanayya v. Nirvanayya*, 9 Bom. 365; *Manomohini v. Hari Prasad*, 1925 Pat. 445.

⁶ *Harihar Pratap v. Bajrang Bahadur*, 1937 P.C. 242.

⁷ *Mulla's Hindu Law*, 9th edn., p. 548.

⁸ *Bai Kesarba v. Shivasangji*, 1932 Bom. 654 : 56 Bom. 619.

⁹ *Nagindas v. Bachoo*, 40 Bom. 270 P.C.

¹⁰ *Raghuraj v. Subhadra*, 1928 P.C. 87 : 3 Luck. 76.

¹¹ *Shyam Charn v. Sri Charn*, 1929 Cal. 337 : 56 Cal. 1135.

property which has vested in him as sole surviving coparcener before the adoption.¹² He will not also lose the share he has already obtained on partition from his natural father and brothers.¹³ But where property has vested in him 'as the heir of his father,' by adoption subsequently into another family he loses his rights in that property, that property being 'the estate of his natural father' within the meaning of the above text.¹⁴ That property will then pass to the next heir of the natural father at the moment.

(4) Where the adopter is a member of a coparcenary, the adopted son will become a full-blown coparcener in that family from the date of adoption.¹⁵ Where the adopter is the sole surviving coparcener when he makes the adoption, the adopted son will form a coparcenary with him, with all the rights as such, in so much of the coparcenary property that is yet undisposed of at the date of adoption.¹⁶ Where a widow whose husband dies a coparcener adopts a son to him before the surviving coparceners sever their joint status, the adopted son will become a coparcener along with them in respect of the family property as it stands at the moment.¹⁷ If however the surviving coparceners have effected a partition between themselves before he is adopted, there is no coparcenary into which he can enter by adoption and he gets nothing of the property of the coparcenary of which his adoptive father was a member.¹⁷

Note 23.

¹² *Venkatanarasimha v. Rangiah*, 29 Mad. 437.

¹³ *Mahabaleswar v. Subramanya*, 47 Bom. 542; *Manikbai v. Gokuldas*, 1925 Bom. 363; 49 Bom. 520.

¹⁴ *Dattatraya v. Govind*, 40 Bom. 429.

¹⁵ *Shankarappa v. Krishna Rao*, 43 Mysore 415; 16 Mys. L.J. 376, 390.

¹⁶ *Nanjammanni v. Devaraj Urs*, 3 Mys. L.R. 174; *Lakshmibai v. Keshav Rao*, 1941 Bom. 193; (1941) Bom. 306 [The family continues joint so long as any predeceased coparcener's widow remains in it with power to adopt].

¹⁷ 43 Mysore 415; 16 Mys. L.J. 376. But see *Sankaralingam v. Veluchami* (1942) 2 M.L.J. 678 F.B. [Existence of a coparcenary at the date of the adoption into which the adopted son could be admitted is no longer material. The adopted son is entitled to reopen a partition effected by the surviving coparceners before the adoption took place.]

Where the widow of a predeceased coparcener makes an adoption after the termination of the coparcenary by the death actually or fictionally of the last coparcener, the adoption has neither the effect of reviving the coparcenary nor of entitling him to any share in the property of the coparcenary.¹⁸ In principle the effect of the extinction of the coparcenary by the death of the last surviving coparcener or by partition, on an adoption thereafter is the same.¹⁹

(5) *Son born after adoption*.—Where a son is born to the adoptive father after adoption, the adopted son's rights are not equal to that of the after-born natural son. On a partition between the two, the adopted son takes in Bombay and Madras only a fourth, in Benares a third and in Bengal a half, of what the natural born son takes.²⁰ If the estate is impartible the natural born son takes the whole.²¹ Except as aforesaid an adopted son is entitled to the same share as a legitimate son.²² Among Sudras the adopted son and the natural born son take equally in Madras and Bengal.²³

24. *Adopted son's rights date from adoption*.—The rights of an adopted son arise for the first time only on his adoption. Even where an adoption is made by a widow, his rights in the property of the adoptive family do not

Note 23.

¹⁸ *Subramanya v. Somasundara*, 1936 Mad. 642 : 59 Mad. 1064 ; *Balu Saktharam v. Sambaji*, 1937 Bom. 279 : 170 I.C. 393 F.B. ; *Rudramma v. Sanganbasappa*, 17 Mysore 145 ; *Dasappa v. Seshagirirao*, 43 Mysore 438.

¹⁹ *Irappa Lokappa v. Madiwalappa*, 1940 Bom. 118 : (1940) Bom. 42. Contra.—(1942) 2 M.L.J. 678 F.B.

²⁰ *Giriappa v. Ningappa*, 17 Bom. 100 ; *Ayyavu v. Niladatchi*, (1862) 1 Mad. H.C. 45.

²¹ *Sahebgowda v. Shiddangouda*, 1939 Bom. 166 : (1939) Bom. 314 F.B. ; *Jogendra v. Nityanand*, 18 Cal. 151 P.C.

²² *Nagindas v. Bachoo*, 40 Bom. 270 P.C.

²³ *Perrazu v. Subbarayudu*, 61 I.C. 690 : 44 Mad. 656 P.C. ; *Asita v. Nirode*, 20 C.W.N. 901 : 35 I.C. 127.

relate back to the death of the adoptive father.¹ An adoption so far as it affects property does not by any fiction relate back to any point of time before its own date, though for the continuance of the family line and the religious and secular consequences of that continuance an adoption must relate back to the death of the adoptive father; for if it did not do so, there would be a gap between the father and the adopted son and in that sense the very purpose of the adoption would be defeated.² In principle there is no difference between the extinction of a coparcenary by the death of the last surviving coparcener and its extinction by partition, so far as the rights of an adopted son adopted after the extinction of the coparcenary are concerned.³

An adopted son would be bound by the alienations made by the adoptive father before the adoption, to the same extent as a natural born son would be.⁴ Where the adoption is made by a member of a joint family, the adoptive father cannot interfere either by deed or will with the rights of survivorship of the adopted son in the coparcenary property.⁵ But where the sole surviving coparcener makes a will and also gives his widow power to adopt, the son adopted by the widow will be bound by the disposition in the will.⁶ Nor can he dispute any disposal of any part of

Note 24.

¹ *Rudramma v. Sangnbasappa*, 17 Mysore 145; *Gurulingiah v. Dyaviah*, 39 Mysore 27:11 Mys. L.J. 186; *Dasappa v. Seshagiri Rao*, 43 Mysore 438:16 Mys. L.J. 301, 319; *Bamundoss v. Tarinee*, (1858) 7 M.I.A. 169.

Contra.—*Sankaralingam v. Veluchami*, (1942) 2 M.L.J. 678 F.B. [Rights of the adopted son relate back to the death of the adoptive father].

² *Shankaramma v. Krishna Rao*, 43 Mysore 415:16 Mys. L.J. 376, 390; *Pratap Singh v. Agarsingji*, 43 Bom. 778 P.C.

³ *Irappa Lokappa v. Madiwalappa*, 1940 Bom. 118:187 I.C. 504.

⁴ *Venkatanarasimha v. Subba Rao*, 1923 Mad. 376:46 Mad. 300; *Kalyanasundaram v. Karuppa*, 1927 P.C. 42:50 Mad. 193 [Gift before adoption, of separate property]; *Veeranna v. Sayamma*, 1929 Mad. 296:52 Mad. 398 [coparcenary property]; *Brij Raj v. Alliance Bank*, 1936 Lah. 946.

⁵ *Venkatanarayana v. Subbammal*, 32 I.C. 383:39 Mad. 107 P.C.; *Purnanand v. Shivcharndas*, 2 Lah. 69:59 I.C. 256.

⁶ 1923 Mad. 376; *Krishnamurthi v. Krishnamurthi*, 1927 P.C. 139:50 Mad. 508; *Basant Kumar Basu v. Kiran Shankar*, 1932 Cal. 600:59 Cal. 859.

the property of his father by the adoptive mother which she has validly made by virtue of her widow's estate in it.⁷ However, the adopted son takes the estate unaffected by alienations made by her without necessity before the adoption.⁸ He comes into the property as it stands at the date of his adoption, with of course the right to dispute invalid alienations which have been made before that date. But, as observed by Reilly, C.J. : 'The fact that he has power to dispute invalid alienations by his adoptive mother is no more an indication that his rights to the property go back before the date of his adoption, than the right of a reversioner to dispute alienations of a widow who comes in before him indicates that the reversioner's rights to the property began before her rights come to an end either by death or by surrender.'⁹

25. *Second adopted son*.—Where a widow makes an adoption validly after the death of the first adopted son (or of the natural born son), the position is not exactly the same as it was when she made the first adoption. A son is superior to a widow as an heir and when a widow makes the first adoption, she is creating an heir who comes in front of her. In adopting a second time, the widow is not creating an heir to her deceased husband's estate. That estate no longer exists. It has become the estate of the first adopted son. By the second adoption she creates an heir to her son's estate and here she is in a superior category because a mother comes before a brother in the order of succession. In view of these circumstances it was contended that though she divests herself of her interest in the property, unlike the first the second

Note 24.

⁷ *Lakshman Rao v. Lakshmi*, 4 Mad. 160 ; *Moro Narayan v. Balaji*, 19 Bom. 809 ; *Yeswant v. Antu*, 1934 Bom. 351 : 58 Bom. 521.

⁸ *Bonomali v. Jagat Chandra*, 32 Cal. 669 P.C. ; *Vaidyanatha Sastri v. Savitri Ammal*, 41 Mad. 75 F.B.

⁹ *Shankaramma v. Krishna Rao*, 16 Mys. L.J. 376, 391 : 43 Mysore 415 : *Har Naraini v. Sajjan Pal*, 1940 P.C. 181 : 190 I.C. 184 [Reversioner's interest becomes concrete only on demise of female owner].

adopted son takes the property without an immediate right to dispute invalid alienations made by her after she gained possession of the estate as the heir of the first adopted son, and that that right of action is postponed until the death or remarriage of the adopting mother.¹ The learned Judges did not accept this contention. Leach, C.J., observed in the judgment in the case, that there exists no overriding reason why the rule which has been applied in the case of the first adoption should not be applied in the case of a second adoption and that therefore they should both be placed on the same footing with regard to the setting aside of unlawful alienations made by the widowed mother.² The High Courts of Calcutta, Bombay and Allahabad have also recognised the immediate right of the second adopted son to set aside unlawful alienations made by the widowed mother.³

In Mysore the position with respect to this subject has been radically altered by this Hindu Law Women's Rights Act, 1933. 'According to Sub. Sec. (2) (a), no adoption made by a widow shall divest her of her estate in any Stridhana property other than such as she may have taken by inheritance from her husband. It has been held by the Privy Council that on the death of the first adopted son the widow holds the property not as the heir of her late husband but as the heir of her adopted son,⁴ and whereas by the first adoption she establishes a direct succession to the estate of her husband, by the second adoption it is only to the estate of the first adopted son that she can possibly establish a succession.⁵ As Leach, C.J., observes: 'However much the widow may intend or even proclaim

Note 25.

¹ *Pattu Achi v. Rajagopala Pillai*, 1941 Mad. 699 : (1941) 2 M.L.J. 134.

² (1941) 2 M.L.J. 134, 142.

³ *Lakshmichand v. Gatto Bai*, 8 All. 319 ; *Hanmant v. Krishna*, 1925 Bom. 402 : 49 Bom. 604 ; *Rai Jatindranath v. Amritlal*, (1900) 5 C.W.N. 20 ; *Hamed Gazi v. Sadat Ali*, 1940 Cal. 241 : 44 C.W.N. 443.

⁴ *Ramaswamy Aiyan v. Venkatramayyan*, 2 Mad. 91, 101 P.C.

⁵ *Madana Mohana v. Purushothama*, 41 Mad. 855, 859 P.C.

that she is holding the property as the property of her husband it will not alter its character. Neither intention nor act can change back her first son's property into the estate of her deceased husband.'⁶ Further, unlike in British India, in Mysore a widow takes the estate of her adopted son as her Stridhana property,⁷ and not being an estate taken by inheritance from her husband, she cannot be divested of that Stridhana by any adoption made by her. Hence in Mysore, by virtue of his adoption, the second (or any subsequent) adopted son cannot even divest her of the first adopted son's estate vested in her (it is her Stridhana), much less is he entitled to dispute any alienation made by her after she got the property as heir of her son.⁸

26. *Sub Sec. (2). Effect of adoption by a widow: Sub Sec. (2) a.*—An adoption made by a widow will divest her of the estate inherited by her from her husband whether she had a full or only a limited estate in it, and the estate will vest in the adopted son because on adoption he becomes a son to his adoptive father at that date and any estate in his father's property incompatible with his position as a son must give way to him.¹ But the adoption will not divest her of any other estate which she may own either as her Stridhana or otherwise. Thus property held by her under a will left by her husband will not be divested by the adoption.² Stridhana owned by her otherwise than by inheritance from her husband will also not be divested. On the death of a first adopted son (or of a natural born son leaving her as his nearest heir), the widow inherits the estate as his heir in which she takes a full estate. That estate no longer

Note 25.

⁶ (1941) 2 M.L.J. 134, 142 : 1941 Mad. 699.

⁷ See Sec. 10 (2) *g* below.

⁸ See the Author's article on Second Adoption in 20 Mys. L.J., p. 2.

Note 26.

¹ *Shankaramma v. Krishna Rao*, 43 Mysore 415 : 16 Mys. L.J. 376, 391.

² *Sukhdeodoss v. Chotibai*, 1928 Mad. 118 ; *Niranjana Das v. Krishenlal*, 1941 Lah. 31 : 193 I.C. 160.

retains the character of her late husband's estate.³ That Stridhana estate vested in her will not be divested if she takes a second son in adoption. But in British India her interest even in the estate of her first adopted son is divested by the second adoption,⁴ which puts the second adopted son—he is just as much the son of his father as was the first adopted son—on the same footing as his deceased brother 'in accordance with Hindu conceptions of what is right and proper.'⁵ See also Note 23 above as to the effect of adoption in other respects.

Sub Sec. (2) b.—Where the property inherited by her from her husband is divested, on adoption, by the adopted son, the widow has one of two rights, namely (1) to obtain maintenance charged upon the property inherited from her husband or (2) to obtain a separate share in the property equal to one-half of the share of the adopted son. This right to obtain maintenance or a share in the alternative is what she will be left with in spite of her being divested of her husband's estate. Before this Act came into force all that she could claim was maintenance. Now she can in the alternative and *at her option* obtain one-half of the share of the adopted son. This right to obtain maintenance or a share can be exercised at any time after the adoption and can be enforced by her by way of a suit or otherwise. But either relief obtained will bar her right to obtain the other.

Sub. Sec. (2) c.—Even if the son adopted by the widow is a minor, she will be divested of the estate. The minor adopted son will be the owner of the property and as adoptive mother she will have the right to be the guardian of the property as well as the person of the minor. As guardian of

Note 26.

³ *Ramaswamy Aiyan v. Venkatramayyan*, 2 Mad. 91, 101 P.C.; *Madana Mohana v. Purushothama*, 41 Mad. 855, 859 P.C.

⁴ *Raja Vellanki v. Venkatrama*, 1 Mad. 174, 190 P.C.; *Rai Jatindranath v. Amritlal*, 5 C.W.N. 20; *Narhar v. Balwant*, 1924 Bom. 437.

⁵ Leach, C.J., in *Pattu Achi v. Rajagopala Pillai*, 1941 Mad. 699.

the minor's property she has the right to manage the estate. Her right to manage such property during the adopted son's minority is the same as if he were her natural born son. Thus she can alienate the property as guardian of the minor, not only in case of need but also for the real benefit of the estate or the well-being of the minor which come under the expression 'legal necessity' justifying an alienation.⁶ Where she alienates the property in the minority of the son and on his death without attaining majority succeeds him as his heir, a person claiming to be the presumptive reversioner cannot sue to set aside the alienation made during the lifetime of the full owner (the minor) as having been made without necessity; in such a case the title of the alienee is not derived from the holder of the limited interest or life-tenant, and there can be no reversionary interests that could be affected by the alienation.⁷

27. *Sub Sec. (3). Pre-adoption arrangements.*—This sub section appears to be based on the decision of the Privy Council in *Krishnamurthi v. Krishnamurthi*¹ which was followed in Mysore in *Sampath Iyengar v. Rangachar*.² Where the adopted son is a major at the time of adoption, he may himself by an arrangement made prior to or the time of adoption agree to his rights in or over the property of the adoptive father being limited curtailed or postponed in the interests of the adoptive mother.³ The adopted son who is a major at the time of adoption, it is submitted, may enter into any arrangement he thinks fit and his powers are not confined only to those mentioned in the sub section. He may enter into any arrangement an adult is capable of under the general

Note 26.

⁶ *Sanganna v. Channavenkatappa*, 25 Mysore 47.

⁷ *Narasi v. Boriah*, 23 Mysore 89 F.B.

Note 27.

¹ 1927 P.C. 139 : 50 Mad. 508.

² 34 Mysore 54 : 6 Mys. L.J. 425.

³ See also *Kashibai v. Tulya*, 40 Bom. 668 : 36 I.C. 546 ; *Pandurang w. Narbadabai*, 1932 Bom. 571 : 56 Bom. 395.

law, and once he enters into any such arrangement it will be binding on him as any other agreement.

Where the adopted son is a minor, his natural father or mother may enter into an arrangement on his behalf with the adoptive father or the adopting widow, prior to or at the time of the adoption. But their right is not unlimited. They can only agree to his rights in or over the property of the adoptive father being limited curtailed or postponed in the interests of the adoptive mother. Thus the natural parents cannot enter into an arrangement on the minor's behalf after the adoption, nor can they agree to the limitation of his rights in the property in the interests of some one other than the adoptive mother.⁴ In *Krishnamurthi v. Krishnamurthi*,⁵ a sole surviving coparcener made a will whereby he bequeathed part of the joint family property to the son whom he was about to adopt, part to his widow for life, part to kindred and part to charity. Just prior to the adoption the natural father of the minor to be adopted executed a deed by which he consented to the provisions of the will. It was held that the natural father could not bind his son by his consent to such a disposition limiting the son's rights in the property of the adoptive father. An agreement or consent by the natural father is not effectual in law or by custom to validate any disposition taking effect after the adoption and curtailing the rights of the adopted son in the adoptive father's property except an agreement whereby the widow of the adoptive father is to enjoy the property during her lifetime or for a less period, that arrangement being consented to by the natural father before or at the time of the adoption.⁶ 'As soon however as the arrangements go beyond that, that is, either give the widow property absolutely

Note 27.

⁴ *Venkappa v. Fakirgouda*, 8 Bom. L.R. 346; *Vyasacharya v. Venkubai*, 37 Bom. 251; *Balkrishna v. Sri Uttar*, 43 Bom. 542; 50 I.C. 912.

⁵ 1927 P.C. 139.

⁶ See also *Hemendranath v. Jnanendra*, 1935 Cal. 702; 63 Cal. 155; *Banarsidas v. Sumat Prasad*, 1936 All. 641; 58 All. 1019.

or give the property to strangers, they think no custom as to this has been proved to exist and that such arrangements are against the radical view of the Hindu Law.⁷ In Madras it has however been held that an agreement between the natural father and the adoptive mother whereby a portion only of the estate is settled on her absolutely is valid and binding on the minor adopted son, if the agreement is fair reasonable and beneficial to him.⁸ Where under an arrangement between the natural mother of a minor adoptee and the adoptive mother, the life interest in the estate of her deceased husband and the management thereof were reserved to her (adoptive mother), it was held that an alienee from the adopted boy could not get possession of the estate during the lifetime of the adoptive mother, the arrangement in the deed of adoption being valid and binding on the adopted son.⁹

An agreement in excess of that permitted by the section will not bind the minor. If on attaining majority he ratifies it, he will be bound by it.¹⁰

28. *Effect of invalid adoption.*—Where there has been an adoption in form but is invalid for any reason the son so adopted does not acquire any rights in the adoptive family nor does he forfeit his rights in his natural family.¹

29. *Gift to person whose adoption is invalid.*—Where a gift or bequest is made to a person who is described as an adopted son, but is in fact not adopted at all or is not validly adopted, the validity of the gift or bequest depends

Note 27.

⁷ See Mulla's *Hindu Law*, 9th edn., p. 553.

⁸ *Raju v. Nagammal*, 1928 Mad. 1289 : 52 Mad. 128 ; see also *Visalakshi v. Sivarama Iyer*, 27 Mad. 577 F.B.

⁹ *Sampath Iyengar v. Rangachar*, 34 Mysore 54 : 6 Mys. L.J. 425.

¹⁰ See *Ramaswamy Aiyar v. Venkatramayyan*, 2 Mad. 91 P.C. ; *Subramanya v. Velayudhan*, 1931 Mad. 808 : 55 Mad. 408.

Note 28.

¹ *Vaithilingam v. Natesa*, 37 Mad. 529 ; *Vaman v. Venkaji*, 45 Bom. 829 : 61 I.C. 460 ; *Haridas v. Manmathanath*, 1936 Cal. 1 : 160 I.C. 332.

on the intention of the donor.¹ Where the intention is to benefit the donee as a designated person (*persona designata*) the gift will take effect though the person does not answer the description given.² Thus where a person devised his estate to another by a document as follows: 'As I have no male issue I took you in adoption 20 years ago. As you said there is no written document I have executed it to-day to that effect. You will be entitled to all my assets and liabilities,' and it was found that the adoption was not true, it was held that the devisee was a *persona designata* entitled to the properties irrespective of his character as the adopted son.³ But where the gift is made to a person on the assumption of his possessing a particular character or relationship, the failure of the claimant to answer to the description will vitiate the gift.⁴

30. *Estoppel*.—A person who is otherwise entitled to dispute an adoption may by his or her declaration act or omission be estopped from disputing it. Thus where a widow had by her conduct for over twenty years recognised and acknowledged a person as the adopted son of her husband, it was held that she could not be permitted to repudiate it thereafter and that whether the adoption was valid or not she was estopped from denying its validity.¹ The series of facts by which the adoption was made and subsequently recognised constitute a representation in law and of fact.²

Note 29.

¹ *Fanindra Deb v. Rajeswar*, 11 Cal. 463 P.C.

² *Venkatramanappa v. Siddappachari*, 4 Mysore 63; *Gowranma v. Puttappa*, 22 Mysore 193; *Nidhomani v. Saroda*, 26 W.R. 91 P.C.; *Bireswar v. Ardha Chander*, 19 Cal. 452 P.C.; *Bai Dhondubai v. Laxman Rao*, 47 Bom. 65.

³ *Lakshamma v. Eregowda*, 43 Mysore 352; 16 Mys. L.J. 434.

⁴ *Rudramma v. Sanganbasappa*, 18 Mysore 56; *Surendra v. Doorga Sundari*, 19 Cal. 513 P.C.; *Lali v. Murlidhar*, 28 All. 488 P.C.; *Ramamma v. Venkatalakshamma*, 1941 Mad. 375; (1941) 1 M.L.J. 286 [Illatom son-in-law].

Note 30.

¹ *Borasetty v. Boramma*, 17 Mys. L.R. 210.

² *Sarat Chander v. Gopal Chander*, 20 Cal. 296 P.C.

But an erroneous opinion that an adoption which is admitted in fact is also valid in law cannot create an estoppel.³ So also a mere acquiescence in an adoption or a mere presence at an adoption does not create an estoppel.⁴

31. *Limitation*.—A suit to obtain a declaration that an alleged adoption is invalid or never in fact took place must be brought within six years from the date when the alleged adoption comes to the knowledge of the plaintiff.¹ A suit to obtain a declaration that an adoption is valid must be brought within six years from the date when the rights of the adopted son are interfered with.² Where a widow who was alleged to have adopted a son after her husband's death, denied the adoption and having obtained certificate of heirship to her husband's estate remained in possession of it till she was dispossessed by the alleged adopted son, it was held that there was no necessity for the widow to bring a suit to set aside the adoption, but that it was for the adopted son to sue for a declaration that his adoption was valid.³

Note 30.

³ *Dhanraj v. Sonibai*, 1925 P.C. 718 : 52 Cal. 482.

⁴ *Gurulingaswamy v. Ramalakshamma*, 18 Mad. 53, 60 ; *Vaithilingam v. Murugian*, 37 Mad. 529.

Note 31.

¹ Art. 118, Lim. Act, see Appendix V ; *Kalyanadappa v. Chanbasappa*, 1924 P.C. 137 : 48 Bom. 411.

² Art. 119, Lim. Act, see Appendix V.

³ *Malapa v. Narasama*, 17 Mys. L.R. 180.

CHAPTER XI

PART III

WOMEN'S FULL ESTATE

Section 10

What is "Stridhana".—(1) "Stridhana" means property of every description belonging to a Hindu female, other than property in which she has, by law or under the terms of an instrument, only a limited estate.

(2) *Stridhana* includes :—

(a) all ornaments and apparel belonging to a female ;

(b) all gifts received by a female at any time (whether before, at or after her marriage) and from any person (whether her husband or other relative or a stranger) ;

(c) property acquired by a female by her own exertions, skill, learning or talents ;

(d) property acquired by a female by purchase, agreement, compromise, finding or adverse possession ;

(e) the income, and savings from income, of all property whatsoever vested in a female, whether absolutely or otherwise ;

(f) property obtained by a female as her share at a partition ; and

(g) property taken by inheritance by a female from another female and property taken by inheritance by a female from her husband or son, or from a male relative connected by blood except when there is a daughter or daughter's son of the propo-
situs alive at the time the property is so inherited.

(3) All gifts and payments other than or in addition to, or in excess of, the customary presents of vessels, apparel and other articles of personal use made to a bride or bridegroom in connection with their marriage or to their parents or guardians or other persons on their behalf, by the bridegroom, bride, or their relatives or friends, shall be the *Stridhana* of the bride.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Stridhana according to the Texts ; (3) 'Property of every description' ; (4) Property belonging to a Hindu female ; (5) 'By law or under the terms of an instrument' ; (6) Clause 2 (a) ; (7) Clause 2 (b) ; (8) Clause 2 (c) ; (9) Clause 2 (d) ; (10) Presumption as to property in woman's possession ; (11) Clause 2 (e) ; (12) Clause 2 (f) ; (13) Clause 2 (g) ; (14) Relative connected by blood ; (15) Sub Sec. (3) ; (16) Gifts and payments in connection with marriage ; (17) Recovery of possession of Stridhana under Sub Sec. (3) by the bride.

1. *Scope of the section.*—Vignaneswara, the author of Mitakshara, defines Stridhana in a comprehensive way and says that property of any description belonging to a woman is her Stridhana. Stridhana connotes the existence of full and complete powers of enjoyment and disposal, powers corresponding to those ordinarily vested in a male owner. The definition given in Sub Sec. (1) is thus based essentially on the Mitakshara definition, and it excludes naturally that in which a female has only a limited estate. This definition is comprehensive enough to include every kind of absolute property which is now or may hereafter become available to women. Without going to detailed qualifications, Sub Sec. (2) illustrates and supplements the definition given in Sub Sec. (1).

It will be noticed in Sub Sec. (2) that property described in clauses (a) to (e) belonging to a woman were regarded as Stridhana even before this Act came into force. The only additions newly made to the kinds of property to be regarded as Stridhana are those in clauses (f) and (g). Of these two, the Select Committee on Women's Rights under the Hindu Law recommended in the draft bill corresponding to clause (g) of this Act, the following: 'Property taken by inheritance by a female from another female, or from her husband or son or from a male relative connected by blood.' (See Clause 12 2(g) of the Bill.) Though the committee considered this recommendation a middle course and a most essential step, the Legislature did not accept it *in toto*. It was accepted with the reservation in clause (2) (g) of this

section, which the learned Chief Justice said was a very important exception.¹

Sub Sec. (3) is a provision intended to discourage unscrupulous exactions of what is called the bridegroom's price, by making it ultimately to enure to the benefit of the bride.

2. *Stridhana according to the Texts.*—Yagnavalkya defines Stridhana thus: 'What was given (to a woman) by the father, the mother, the husband, or a brother, or received by her before the nuptial fire or presented to her on her husband's marriage to another wife, *and the rest* (ádya) is denominated Stridhana. So, that which is given by kindred, as well as her marriage fee (sulka) and anything bestowed after marriage.' Other sages or writers of Smritis also define Stridhana, but they all use it in a technical sense. These Smritis have been commented upon by various commentators of the different schools, and in determining what is Stridhana according to a particular school, the Court has to look to what the commentators who are authorities in that particular school have said on the subject.¹

According to the Mitakshara, the commentary on Yagnavalkya Smriti, by Vignaneswara, which is of supreme authority in Mysore, Stridhana is defined as follows: 'That which was given by the father, by the mother, by the husband, or by a brother, and that which was presented by the maternal uncles and the rest at the time of wedding before the nuptial fire; and a gift on a second marriage or gratuity on account of supersession; and, as indicated by the word *ádya* (and the rest) property obtained by (1) inheritance, (2) purchase, (3) partition, (4) seizure, *e.g.*, adverse possession, (5) finding; all this is Stridhana according to Manu and

Note 1.

¹ *Chikkanarasappa v. Honnuramma*, 43 Mysore 181 : 16 Mys. L.J. 167.

Note 2.

¹ *Salemma v. Lutchmana*, 21 Mad. 100.

the rest.' Vignaneswara further says that the term Stridhana conforms in its import with its etymology and is not technical. Thus according to the Mitakshara, property of any description belonging to a woman is her Stridhana.² By laying down the proposition that Stridhana is not to be understood in a technical sense but in its etymological sense, Vignaneswara and other great commentators who followed him succeeded in effecting a beneficial change in the archaic Smriti Law, and placed women almost on a footing of equality with men as regards the capacity to hold property.³

Though the Privy Council repeatedly warned Judges under an obligation to administer Hindu Law that their duty was not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities (Smritis), as to ascertain whether it has been received by the commentary which is accepted as authority in the place,⁴ their Lordships themselves have in effect brushed aside the whole of Vignaneswara's expansion of the word *adya*.⁵ As pointed out by Miller, C.J., in *Kenchappa v. Lingappa*,⁶ we are not in Mysore bound by decisions of the Privy Council, though naturally we pay great respect to their decisions on their own merits. The enactment of this section, sets all doubts at rest and makes the law in Mysore quite clear and far in advance of that prevailing in the neighbouring territory.

3. '*Property of every description*'.—Property of every description can be owned by a woman as Stridhana, for example, movables, immovables, corporeal and incorporeal rights, etc., in short, any property capable of being owned.

Note 2.

² See *Mit.*, Chap. II, Sec. 11, paras 2-4.

³ S. Subramanya Iyer, J. (?), in 21 Mad. 100, 103.

⁴ *Collector of Madura v. Mootoo Ramalinga*, 12 M.I.A. 397, 435.

⁵ *Bhagwan Deen v. Myna Baee*, 11 M.I.A. 487 [Inheritance is not Stridhana]; *Sheo Shankar v. Debi Sahai*, 25 All. 468 P.C. [do.]; *Debi Mangal Prasad v. Makadeo Prasad*, 14 I.C. 1000 : 34 All. 234 P.C. [Share obtained on partition is not Stridhana].

⁶ 24 Mysore 249.

4. *Property belonging to a Hindu female.*—On the date when this Act came into force or thereafter a female may be possessing different kinds of property. Some of them may be limited estates and some may be absolute or full estates. A Hindu woman who had on the date this Act came into force a limited estate, got a full estate over it on that date, if it was Stridhana within the Act.¹ If it was not Stridhana according to this section, she continued to have only the limited estate unaffected by this section.

5. ‘*By law or under the terms of an instrument.*’—Where by any law a woman has only a limited estate in any property she cannot claim a full estate therein. The words ‘by law’ refer to any law for the time being in force and the general rules and incidents of Hindu Law as modified by legislative enactments including this Act. Where a widow inherited property before this Act came into force, from her husband who left a daughter also at his death, the widow took only a limited estate namely a woman’s estate, and under the law she continued to take the same limited estate in it.¹

Property in which under the terms of an instrument she is given only a limited estate will be held by her under the same tenure, and this Act will not interfere to give her a full estate in the property. Thus where a property is bequeathed to a woman for her life and thereafter to some one else, this Act cannot interfere to give her an absolute estate in the property. Where property is granted to a widow to be enjoyed by her during her lifetime in lieu of maintenance, her right in it will not be enlarged by anything in the Act.²

Note 4.

¹ *Siddalingamma v. Muddamallegowda*, 40 Mysore 85 : 13 Mys. L.J. 79 ; *Govinda Rao v. Chandra Bai*, 42 Mysore 144 : 15 Mys. L.J. 85.

Note 5.

¹ *Chikkanarasappa v. Honnuramma*, 43 Mysore 181 : 16 Mys. L.J. 167.

² See also *Bagade Krishniak v. Chowdiah*, 4 Mys. L.R. 28 ; *Anniya v. Manchamma*, 4 Mysore 1 ; *Siddananjamma v. Baley Nanjappa*, 4 Mysore 62.

6. *Clause 2 (a).*—The ornaments and apparel belonging to a woman are her Stridhana. She has over them absolute and unrestricted powers both of enjoyment and disposition. See Sec. 11 (1). On her death these will pass to her own heirs, first to her daughters, then to daughters of daughters and so on according to the order given in the proviso to Sec. 12 (1) I.

7. *Clause 2 (b).*—All gifts received by a female at any time and from any person whether a relative or a stranger are her Stridhana. Whether the gift is received by her before her marriage¹ or during coverture² or during widowhood³ makes no difference to the quality of the estate she takes in the gift. Even before this Act, it was held that the character of a gift as Stridhana is not in any way affected by the fact that she acquired the gift while she was a widow.⁴ A gift by a Hindu father to his daughter on the occasion of her marriage is a moral obligation and such a gift of a reasonable portion of family immovable property made at or even after her marriage is binding on the undivided family members.⁵ Such a gift will be the daughter's Stridhana.

The kind of Stridhana which this clause speaks of, also passes on her death intestate, to her own heirs according to the order given in proviso to Sec. 12 (1) I.

8. *Clause 2 (c).*—Property acquired by a female by mechanical arts such as spinning, painting, etc., or otherwise by her exertions whether during maidenhood, coverture or widowhood is her Stridhana.¹ Where a woman deserted

Note 7.

¹ *Venkata v. Venkata*, 1 Mad. 281, 286.

² *Salemma v. Lutchmana*, 21 Mad. 100.

³ *Brij Indur v. Janki Kuer*, (1877) 1 Cal. L.R. 318 P.C.; *Bai Narmada v. Bhagwantrao*, 12 Bom. 505.

⁴ *Nagamma v. Venkatachellam*, 4 Mys. L.R. 241.

⁵ *Chenna v. Kempanna*, 42 Mysore 363 : 14 Mys. L.J. 456.

Note 8.

¹ See also *Salemma v. Lutchmana*, 21 Mad. 100, 105; *Muthu Ramakrishna v. Marimuthu*, 38 Mad. 1036 : 24 I.C. 363.

by her husband was getting a government scholarship, it was held that the proceeds of the scholarship were her personal earnings and not in any way claimable by her husband.²

9. *Clause 2 (d): Property acquired by purchase.*—Property purchased by a woman with her Stridhana and the savings of income from Stridhana, constitute her Stridhana.¹ But if it is purchased out of property in which she has only a limited estate, it will not be her Stridhana. Thus where she purchases property out of the estate inherited from her husband, the purchased property will only be an addition to her husband's estate in her hands in which she takes only a limited estate. The purchase money must come out of her Stridhana if the property purchased must be her Stridhana. Thus property purchased out of the income or savings out of the income of property in which she has only a woman's estate is her Stridhana.

Acquired by agreement.—Where a female earns money by advancing funds which form her Stridhana on a mortgage or by investing it on a leasehold, the money so earned will be her Stridhana. Where a woman holds some property under an arrangement made by her husband at the time of her marriage setting it apart for her sole use, the property is her Stridhana, and her title is, at its commencement and during its continuance adverse to the remaining members of the family.² Where in a deed of partition full-huk was expressly granted to a widow in certain properties, it was held that the property was her Stridhana and she could alienate it without being liable to be questioned by reversioners.³

Note 8.

² *Subbamma v. Subbiah*, 18 Mys. L.R. 162.

Note 9.

¹ *Venkata v. Venkata*, 2 Mad. 333 P.C.; *Subramanian v. Arunachellam*, 28 Mad. 1; *Kailasanath v. Vadivanni*, 1935 Mad. 740; 58 Mad. 488.

² *Koopa Iyengar v. Chicka Sesha Iyengar*, 4 Mys. L.R. 153.

³ *Kempa Revayya v. Siddappa*, 8 Mysore 144; *Debi Mangal Prasad v. Mahadeo Prasad*, 34 All. 234 P.C.; *Saheb Rai v. Shafiq Ahmed*, 1927 P.C. 101; 101 I.C. 426.

Acquired by compromise.—Strictly speaking property obtained by a woman under a compromise or a family arrangement will be Stridhana or not according to the terms of the deed in question.⁴ Property obtained by a woman under a compromise in consideration of her giving up her rights in relation to her Stridhana, is her Stridhana.⁵ Where property was allotted to her in lieu of her maintenance by a compromise decree, it was held that she acquired an absolute estate in the property so allotted.⁶ It does not make any difference whether the maintenance is awarded during coverture⁷ or during widowhood, nor does it make any difference whether it is awarded under an agreement between the parties or granted by a decree of the Court.⁸

Acquired by adverse possession.—Property acquired by a woman by adverse possession becomes her Stridhana.⁹ Where a person renounced the world and lived as an ascetic leaving his wife as the ostensible and unquestioned owner of his property, her adverse possession for twelve years was sufficient to give her title and to forfeit that of the husband and his next heirs under the ordinary rule as to title by prescription.¹⁰

Acquired by finding.—Property obtained by a woman by finding is her Stridhana.

10. *Presumption as to property in woman's possession.*—There is no presumption that property found in the possession

Note 9.

⁴ *Parshottam v. Keshavlal*, 1932 Bom. 213 : 56 Bom. 164 ; *Adya Shankar v. Mt. Chandrawati*, 1934 Oudh 265 : 150 I.C. 519 ; *Nathulal v. Baburam*, 1936 P.C. 103 : 151 I.C. 33.

⁵ *Saodamini Dasi v. Adm. General of Bengal*, 20 Cal. 433 P.C.

⁶ *Srikantasastri v. Theli Chikkanna*, 16 Mysore 214 ; *Subramaniam v. Arunachellam*, 28 Mad. 1, 7.

⁷ *Mani Lal v. Bai Rewa*, 17 Bom. 758.

⁸ 28 Mad. 1.

⁹ See also *Mohim Chander v. Kashi Kant*, (1897) 2 C.W.N. 161 ; *Sham Koer v. Dah Koer*, 29 Cal. 664 ; *Kambai Ram v. Amri*, 32 All. 189 ; *Dhurjati v. Ram Bharos*, 1930 All. 109 : 52 All. 222.

¹⁰ *Chikka Mariamma v. Venkataswamappa*, 9 Mysore 258.

of a widow, of the acquisition of which no account is given, is that of her husband.¹ Nor is there any presumption that the money with which a widow in possession of her husband's estate makes a purchase of property came out of the savings from her husband's estate.² In the absence of proof as to the character of property left by a married woman, it should not be presumed to be of such a nature as to make her relatives on the maternal or paternal side her heirs and successors.³

11. *Clause 2 (e).*—The income and savings from income of Stridhana belonging to a woman are necessarily Stridhana. According to this clause the income and savings from income of property in which a woman has only a limited estate, are also her Stridhana. For, even in property in which she has only a limited estate, she has under Sec. 17 (a) absolute and unrestricted powers over the income therefrom. Unless the income or investment made out of such income is clearly intended to be an accretion to such property it shall be deemed to be her Stridhana. See also Sec. 20. Where a woman purchased, out of the income from her husband's estate in her hands as his heir, some property in the name of her brother and then made a gift of it, it was held that the property being her Stridhana she could do so.¹

12. *Clause 2 (f).*—Prior to this Act a woman had no right to a share at a partition. Under the Act some female relatives not only get a share at a partition but also take a full estate in the share allotted to them.

Note 10.

¹ *Diwan Ram v. Indra Pal*, 26 Cal. 871 P.C. ; *Ganpat v. Secretary of State*, 45 Bom. 1106 ; *Balo v. Mst. Parbati*, 1940 All. 385 : 190 I.C. 578.

² *Baikunt Nath v. Jai Kishen*, 51 All. 341 : 113 I.C. 266.

³ *Thimmappa v. Lingee*, 16 Mys. L.R. 55.

Note 11.

¹ *Naranappa v. Seetharamayya*, 26 Mysore 147 ; see also *Dasappa v. Rudramma*, 18 Mys. L.J. 140.

As already observed in Sec. 8, a female is not entitled to demand a partition. But when a partition takes place she is entitled to claim a share if she is one of the female relatives enumerated in Sec. 8(1). They are generally the widows, unmarried daughters and sisters, mother, grandmother, etc. The wife of a person who participates in the partition does not get a share.

This clause gives females an advantage namely of having a full estate in the share they get at a partition. But it is coupled with a disadvantage namely the absence of a right to demand a partition, but to simply wait for it. In British India the share allotted to a woman is not her Stridhana.¹

13. *Clause 2 (g).*—This clause states when property inherited by a woman will be her Stridhana. Property taken by inheritance by a female from another female is her Stridhana. See also Sec. 13. A female inheriting property from (1) her husband or (2) her son or (3) a male relative connected by blood, will take a full estate in it, if there is no daughter or daughter's son of the propositus alive at the time the property is so inherited. Otherwise she takes only a limited estate in the inheritance. In all other cases, a female takes only a limited estate in what she inherits. For example, a female inheriting from a male relative with whom she is not connected by blood, takes only a limited estate known as the 'woman's estate' in the inheritance whether a daughter or daughter's son of the propositus exists or not. Thus a son's widow inheriting her father-in-law's separate property takes only a woman's estate in it terminable at her death and passing to the next heir of the father-in-law at that time.

Property taken by a female from her husband.—In the absence of male issue, a person's widow inherits his

Note 12.

¹ *Debi Mangal Prasad v. Mahadeo Prasad*, 34 All. 234 P.C.

property. If he has no daughter or daughter's son alive at the time of his death, the widow takes a full estate in the inheritance. If he leaves a daughter or daughter's son also at his death, his widow takes only a woman's estate in the inheritance.¹ Even a daughter who is in the womb of his wife at the time of his death is considered a daughter alive at the time the property is inherited by the widow and will prevent her getting a full estate in the inheritance.² Even if the daughter or daughter's son should thereafter die in the lifetime of the widow, the widow's limited estate in the inheritance from her husband will not enlarge into a full estate.² On her death the property will pass to the next heir of her husband.

Property taken by a female from her son.—This is the case of the mother succeeding to her son. The mother takes a full estate in the inheritance if her son has left no daughter or daughter's son alive at the time the property is inherited by her. It will be seen that the mother's place in the order of heirs in Sec. 4 (1) is after the daughter and the daughter's son. Hence at the time a mother inherits property from her son, no daughter or daughter's son of her son (propositus) can be alive. The exception in the clause cannot therefore operate in the case of a mother inheriting from her son and come in the way of her taking a full estate. Thus the mother always takes a full estate in the property she inherits from her son.

Property taken from a male relative connected by blood.—A father or a brother is a male relative connected by blood. Hence a daughter or a sister inheriting property from the propositus takes only a limited estate if the propositus has a daughter or daughter's son alive at the time the property is inherited by the daughter or sister. If not they take a full estate in it. It will be seen similarly that

Note 13.

¹ See *Kittamma v. Seshamma*, 43 Mysore 43 : 16 Mys. L.J. 232.

² *Chikkanarasappa v. Honnuramma*, 43 Mysore 181 : 16 Mys. L.J. 167.

a brother's daughter, a son's daughter, a father's sister, a paternal uncle's daughter, a daughter's daughter, a daughter's daughter's daughter, etc., are all relatives connected by blood with the *propositus* and hence take a full estate if he has left no daughter or daughter's son, according to the exception. The exception mentioned in the clause does not at all come into operation in the case of the female heirs coming under this relationship except the daughter. Hence a son's daughter, a brother's daughter, etc., always take a full estate in the property they inherit from the male *propositus*. But a daughter takes only a limited estate if there is a daughter's son of the *propositus* alive at the time she inherits. Otherwise she takes a full estate. The existence, however, of another daughter will not prevent one daughter taking a full estate in the property if there is no daughter's son.³ Both the daughters simultaneously inherit the property taking absolute estates in severalty.

Illustration.—(1) A person dies leaving his widow and a daughter. The widow succeeds to the estate and takes only a woman's estate in it. By the time she dies, her daughter begets a son. On the death of the widow the daughter succeeds to the estate and takes only a woman's estate in it because there is a daughter's son of the *propositus* alive at the time she inherits the property, though the daughter's son was not born or begotten at the time of the death of the *propositus*.

(2) If in the above case the daughter's son was neither begotten nor born when the widow died, the daughter would take a full estate in the inheritance. The birth thereafter of a son to her will not have the effect of cutting down the full estate she has taken into a limited estate. She can deal with the estate as her *Stridhana* and on her death intestate it will pass to her heirs according to the order given in Sec. 12.

(3) A person dies leaving his widow, a daughter and a daughter's son. The widow inherits the property and takes a woman's estate in it. The daughter's son predeceases the widow. Then on the death of the widow, her daughter inherits the property and takes a full estate in it because there is no daughter's son of the *propositus* alive when she (daughter) inherits the property, though he had left a daughter's son alive at the time of his death.

Note 13.

³ *Govinda Rao v. Chandrabai*, 42 Mysore 144 : 15 Mys. L.J. 85.

(4) A person dies leaving a widow and a daughter. At the time of the widow's death, the daughter is conceived of a son. She then takes only a limited estate in the inheritance because the son in her womb is considered as alive at the time she inherits. But if the child conceived turns out to be a daughter, she takes a full estate at the death of the widow.

14. *Relative connected by blood.*—These words are not defined in the Act. Understood in the ordinary sense they would mean a relative connected by an unbroken line of male or female ascent or descent up to any degree. Thus a person's daughter's daughter, daughter's daughter's daughter, daughter's son's daughter, sister's daughter's son's daughter, paternal uncle's sister's daughter, etc., are all relatives connected by blood with him. And as the exception in the clause will not apply in the case of any of these female relatives, they always take a full estate in the property they inherit. It will be noticed that whereas very near agnates of a person like his son's widow, brother's widow, step-mother, etc., can never take an absolute estate in the inheritance, these distant female relatives always take a full estate if they inherit his property. Even in Bombay, the only Presidency where some female heirs are entitled to take a full estate in the property inherited from males, only those female relatives who are born in the gotra of the deceased owner and their daughters take the property as their Stridhana.¹ These are the daughters born in the family like the daughter, son's daughter, brother's daughter, sister, father's sister, etc., and the daughters of these daughters. But the more distant female relatives connected by blood take only a woman's estate in the inheritance in Bombay.

15. *Sub Section (3).*—When dealing with sulka or the bride's price which is considered the bride's Stridhana, Mr. G. Sarkar Sastri made a noteworthy suggestion that 'the

Note 14.

¹ *West and Buhler*, 4th edn., p. 120 ; *Tuljaram v. Mathuradas*, 5 Bom. 662, 670 ; *Gulappa v. Thayawa*, 31 Bom. 453.

bridegroom's price, which according to recent practice originating in the moral and religious degradation of the so-called educated men, is extorted by the bridegroom's party from the bride's father, must on the similar and stronger grounds of equity be considered to be the bride's Stridhana and the recipient must be held to be a trustee for her¹. Sarkar Sastri also refers to two texts of Vyasa which expressly ordain that 'Whatever is given at the time of the marriage to the bridegroom with intention, or presented to the husband of a daughter' belongs entirely to the woman. The Select Committee on Hindu Law in Mysore were impressed with this noteworthy suggestion, and made a recommendation that presents extracted by or on behalf of the bridegroom, over and above those voluntarily given to him, should be treated as being part of the bride's Stridhana instead of being regarded as the perquisite of the bridegroom or his parents. The report of the committee says that the measure proposed 'Even if it did not altogether discourage unscrupulous exactions of the kind, would at least ensure that the presents often quite considerable in amount relative to the means of the bride's parents enure for the ultimate benefit of the female herself and her heirs.'²

A curious feature of the sub-section is that gifts and payments in excess made to the bridegroom or his parents or guardians or other persons on his behalf, by even the bridegroom's relatives and friends should also be the Stridhana of the bride.

16. *Gifts and payments in connection with marriage.*— Gifts and payments other than the customary presents of vessels, apparel and other articles of personal use, made in connection with the marriage, to the bride or bridegroom, will be the Stridhana of the bride. Thus the gift of property of any description, for example, lands, houses, motor cars,

Note 15.

¹ *Sarkar's Hindu Law*, 6th edn., p. 636.

² *Select Committee Report on Hindu Law Reform*, 1930, p. 132.

shares, etc., all come within the meaning of this section. Gifts and payments in addition to or in excess of the customary presents will also be the bride's Stridhana. As to whether the gifts of vessels, apparel and other articles of personal use are in excess of the customary presents will depend on and vary in each case with the custom among the parties and their status in life.

To come within the meaning of this section persons who receive the gifts and payments are to be the bride, the bridegroom, their parents or guardians or other persons on their behalf. and the persons who make the gifts are the bridegroom, the bride, or their relatives or friends, and the gift must be made in connection with their marriage. All such gifts and payments will be the bride's Stridhana. It appears to be proper and reasonable to interpret the sub section so as to exclude gifts and payments, made by the bridegroom's relatives or friends, to the bridegroom or his parents in connection with the marriage, from being the bride's Stridhana under this sub-section, the idea behind the enactment being only to discourage unscrupulous exactions by the bridegroom's party from the bride's parents. Gifts made by the bride's party to the bridegroom, his parents or guardians or others on his behalf will be the Stridhana of the bride. Gifts and payments made to the bride, her parents or guardians or others on her behalf by all persons whether they belong to the bride's party or the bridegroom's party will however be the bride's Stridhana.

In connection with their marriage.—The words used are not 'at the time' of marriage but 'in connection with their marriage'. Hence presents and gifts made before at or after the actual marriage ceremony come within the meaning of this section, provided they are not entirely unconnected with their marriage.¹ Thus a gift to the bridegroom long after their marriage may not be a gift in

Note 16.

¹ See *Chenna v. Kempamma*, 42 Mysore 363 : 14 Mys. L.J. 456.

connection with the marriage and such a gift to him cannot be claimed by his wife as her Stridhana.

17. *Recovery of possession of Stridhana under Sub Sec. (3) by the bride.*—A gift or payment other than or in addition to or in excess of the customary presents in connection with their marriage, to the bridegroom or his parents or other persons on his behalf, is declared by Sub Sec. (3) to be the Stridhana of the bride. The gift *in fact* is to the bridegroom and its ownership and possession both vest in him at the time. Immediately however this statute intervenes and declares it *in law* to be the Stridhana of the bride. Hence the legal ownership of such a gift immediately re-vests in the bride and nothing more than mere possession continues with the bridegroom, which in the circumstances is adverse to the bride. Further the bridegroom is not a trustee, express implied or even constructive for the benefit of the bride, because she is not a mere beneficiary but the legal owner of the gift. Her right to its possession accrues immediately it becomes her Stridhana, that is, immediately the gift is made to the bridegroom or others on his behalf. No demand and refusal being necessary for the cause of action for recovery of possession, time begins to run against her at the same time, except where she is yet a minor.

Section 11.

(1) *Nature of estate in Stridhana.*—A female owning Stridhana property shall have over it absolute and unrestricted powers both of enjoyment and of disposition *inter vivos* and by will, subject only to the general law relating to guardianship during minority.

(2) Except when acting as the lawful guardian of his wife, a husband shall have no right to or interest in any portion of his wife's Stridhana during her life, nor shall he be entitled to control the exercise of any of her powers in relation thereto.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Guardianship of minor wife ; (3) Absolute and unrestricted powers over Stridhana ; (4) Sub Sec. (2): Husband's right over wife's Stridhana.

1. *Scope of the section.*—This section states that a woman has absolute and unrestricted powers of enjoyment and disposition over her Stridhana. Her interest in and right over it amount to a full estate. Her rights do not differ or are not less because the Stridhana is acquired in one way or the other, nor do they differ according as she is a maiden or a married woman or a widow. But judicial decisions in British India still maintain some distinction based on the manner of acquisition and the status of the female. In Mysore, however, her right over it is as full and complete as those ordinarily vested in a male owner, subject only to the general law relating to guardianship during minority. Sub Sec. (2) makes a slight departure from the Mitakshara Law on the point.

2. *Guardianship of minor wife.*—Minority terminates at the completion of the age of eighteen years, except where any other age is prescribed in any special enactment.¹ Before marriage the father and in his absence the mother are the natural guardians of a female. After marriage the husband is the lawful guardian of his minor wife's person as well as property.² His rights are superior to her mother's. Even a Court has no power to appoint any one else as her guardian, unless in the opinion of the Court he is unfit to be the guardian of her person.³ He is entitled to require his minor wife to live with him, however young she may be, unless there is a custom enabling the wife to live with her parents until she has arrived at puberty, which being an exception to the general rule must be specially pleaded and proved.⁴ After the husband's death the guardianship of

Note 2.

¹ *Siddappa v. Seshadri*, 18 Mysore 79 ; *Government of Mysore v. Anandarayaya Mdr.*, 10 Mys. L.J. 323.

² *Akama v. Puttiya*, 18 Mys. L.R. 119 ; *Srinivasa Rao v. Tirumala Setty*, 1 Mysore 91 ; *Lakshmanachari v. Subbamma*, 39 Mysore 198 : 12 Mys. L.J. 180 ; *Lakshmiddevamma v. Dhanalakshamma*, 42 Mysore 464 : 15 Mys. L.J. 443.

³ See Sec. 18, Guardians and Wards Act.

⁴ 18 Mys. L.R. 119 ; *Armuga v. Veeraraghava*, 24 Mad. 255 ; *Navnitlal v. Purshottamdas*, 1926 Bom. 238 : 50 Bom. 268.

the wife if she is a minor devolves upon her husband's relations in preference to her paternal relations.⁵

The rights and privileges of parents as to control and custody of minors are to be exercised not in the interest and for the benefit of the parents but in the interest of the children.⁶

3. *Absolute and unrestricted powers over Stridhana.*—Stridhana means property in which a female has an unlimited estate, that is, a full estate, which is defined as the sum-total of the rights exercisable over property including the power of unfettered disposal *inter vivos* and by will. Sub Sec. (1) of this section states the same thing. She may dispose of it by sale, gift or will or in any way she pleases without the consent of or even against the wishes of her husband.¹ No one, not even the husband, is entitled to control the exercise of any of her powers over Stridhana, except the parents before marriage and the husband after marriage when acting as her lawful guardians during her minority. They cannot otherwise bind her by any dealings with her property.²

4. *Sub Sec. (2).—Husband's rights over wife's Stridhana.*—According to the Mitakshara Law a husband can 'take' his wife's Stridhana in case of distress, as in a famine or during illness or imprisonment. This right to take the wife's property is personal to him and if he does not choose to take it, nobody else can take it.¹ Even

Note 2.

⁵ *Khudiram v. Bonvarilal*, 16 Cal. 584.

⁶ *Muniappa v. Nagappa*, 2 Mysore 84.

Note 3.

¹ *Venkata v. Venkata*, 2 Mad. 333 P.C. ; *Sham Sivendar v. Janki Kuer*, 36 Cal. 311 P.C. ; *King Emperor v. Satnarain*, 1931 All. 265 : 53 All. 437 ; *Venkureddy v. Hanmant Gowda*, 1932 Bom. 559 : 57 Bom. 85.

² *Mohima Chunder v. Durgamonee*, (1875) 23 W.R. 184 P.C.

Note 4.

¹ *Tukaram v. Gunaji*, (1871) 8 Bom. H.C.A.C. 129.

if he takes it in such circumstances but does not actually use it or dispose of it in his lifetime, his creditors are not entitled to it after his death.²

Sub Sec. (2) of this section modifies this position. The opening words of the sub sec., namely, 'Except when acting as the lawful guardian of his wife' so far as Mysore is concerned, put an end to the right of a husband to take and use his wife's Stridhana in times of distress, such as in a famine or during illness or imprisonment.³ He is not entitled to control the exercise of any of her powers over her Stridhana, nor has he any right to or interest in any portion of it. He cannot bind her by any dealings with her Stridhana except when acting as her lawful guardian during her minority. Thus where a husband sold his minor wife's property for the purpose of purchasing another land for her, the sale by him was not upheld.⁴ Whether the act is or is not in the interest and for the benefit of the minor is the test of a lawful guardian's act.⁵

Decided cases.—There is no provision in the law allowing a husband alone to sue instead of his wife, for property claimed as belonging to her. The husband has in such cases no *locus standi*.⁶ A married woman who has jointly contracted with her husband is liable to the extent of her Stridhana or separate property.⁷ In *Pillamma v. Chikka Syed Sab*,⁸ the defendant a married woman pleaded coverture and denied having been authorised by her husband to deal with the plaintiff. On that plea Thamboo Chetty, J., held that her husband should have been made a party to

Note 4.

² *Nammalwar v. Thayarammal*, 1927 Mad. 1031 : 50 Mad. 941.

³ *Lakshmidēvamma v. Dhanalakshamma*, 42 Mysore 464 : 15 Mys. L.J. 443.

⁴ *Srinivasa Rao v. Thirumala Setty*, 1 Mysore 91 ; *Mohima Chander v. Durgamonee*, (1875) 23 W.R. 184 P.C.

⁵ *Muniappa v. Nagappa*, 2 Mysore 84.

⁶ *Kadiah v. Thimmaraya*, 4 Mys. L.R. 147.

⁷ *Nanjundappa v. Soobiva*, 9 Mys. L.R. 352 ; *Narottam v. Nanka*, 6 Bom. 473 ; *Radha in re*, 12 Bom 228.

⁸ 8 Mys. L.R. 299.

the suit. Ramachandra Iyer, J., held that there is no rule of law prohibiting a suit against a married woman without making the husband also a party to it. Plumer, C.J., agree with the order passed by Thamboo Chetty, J., with hesitation.

Section 12.

(1) *Succession to Stridhana*.—The succession to Stridhana property belonging to a Hindu female dying intestate shall be as follows :—

I. In the first instance, to her children and grand-children, if any, in the following order :—

- (i) her children, male and female ;
- (ii) her grand-children, male and female ;

Provided that in the case of Stridhana property comprised in clauses (a) and (b) of Sub-Sec. (2) of Section 10, the order shall be as follows :—

- (a) daughters ;
- (b) daughters of daughters ;
- (c) sons of daughters ;
- (d) sons ;
- (e) sons and daughters of sons.

II. In the absence of children and grand-children, to—

(iii) the husband, if any, lawfully married to the said female ;

(iv) the husband's heirs in order of succession to him.

III. Failing the husband and his heirs, or if the said female was unmarried or not lawfully married, then to her own relatives in the following order :—

- (v) uterine brothers and sisters ;
- (vi) mother ;
- (vii) father ;
- (viii) father's heirs in order of succession to the father ;
- (ix) mother's heirs in order of succession to the mother.

Explanation.—"Children" in this Sub Section includes illegitimate as well as legitimate children and children born out of wedlock.

(2) The members (where there are more than one) of each group of heirs specified in Sub Sec. (1) shall take simultaneously and in equal shares, provided that the descendants of the deceased female in the second generation shall take *per stirpes* and not *per capita*.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Heirs to Stridhana other than ornaments and gifts received ; (3) Heirs to Stridhana included in Clauses 2 (a) and 2 (b) of Sec. 10 ; (4) Succession to Stridhana in default of issues ; (5) Succession to unmarried woman's Stridhana.

1. *Scope of the section.*—Sec. 4 gave the order of succession to the property of a Hindu male dying intestate. This section gives the order of succession to Stridhana property belonging to a Hindu female dying intestate. The simple and comprehensive table of succession given in the section is based essentially on the Mitakshara scheme, which recognised one order of succession only for a married woman's property of all kinds with the single exception of the *sulka*, unlike other commentators who favour distinct courses of descent for different kinds of Stridhana.¹ The explanation to Sub Sec. (1) makes it clear that illegitimate children inherit, simultaneously and equally with the legitimate children, the Stridhana of their mother or grandmother. Sub Sec. (2) adopts the Mitakshara rule that descendants of the female in the second generation take Stridhana *per stirpes* and not *per capita*.²

2. *Heirs to Stridhana other than ornaments and gifts received.*—Stridhana other than ornaments and apparel and gifts received by a female passes in the following order:

(i) *Her children, male and female.*—That is, her sons and daughters, legitimate and illegitimate, if any, all succeed in the first place. They take simultaneously and in equal shares. They take absolute estates as tenants-in-common

Note 1.

¹ See also *Salemma v. Lutchman*, 21 Mad. 100.

² See also *Mitakshara*, Chap. II, Sec. ii, para 16; *Smritichandrika*, Chap. 9, Sec. iii, para 25 ; *Karuppai v. Sankaranarayana*, 27 Mad. 300, 308.

without rights of survivorship. Even if the sons inheriting the mother's Stridhana are living as members of a joint family they do not take as joint-tenants with rights of survivorship.¹ The daughters also take full estates in severalty because property inherited by a female from another female is her Stridhana.²

The step-daughter of a woman is entitled to inherit her Stridhana in preference to her maternal uncle's son.³

(ii) *Her grand-children, male and female*.—On failure of the children, the grand-children male and female, legitimate and illegitimate, all simultaneously succeed to the Stridhana. Grand-children includes son's sons, son's daughters, daughter's sons and daughter's daughters. They take absolute estates in severalty and not as joint tenants with rights of survivorship. They take *per stirpes* (according to stock) and not *per capita*.⁴

3. *Heirs to Stridhana included in Clauses 2 (a) and 2 (b) of Sec. 10*.—All ornaments and apparel belonging to a woman and all gifts received by her will pass in the first instance in the following order and not as in Note 2 above :—(a) *daughters*¹; (b) *daughters of daughters*; (c) *sons of daughters*; (d) *sons*; and lastly (e) *sons and daughters of sons*. The heirs in the first generation take *per capita* and those in the second generation take *per stirpes*.² The difference in the order of succession between these two kinds of Stridhana is only thus far. On failure of children and grand-children,

Note 2.

¹ *Karuppai v. Shankaranarayana*, 27 Mad. 300 F.B.; cf. *Venkayamma v. Venkataramanayamma*, 25 Mad. 678 P.C.; and also *Chik Nanjundappa v. Nanjappa*, 11 Mysore 164, 169.

² See Sec. 10 (2) (g).

³ *Rangappa v. Basamma*, 24 Mysore 387.

⁴ 27 Mad. 300 F.B.; *Mitakshara*, Chap. II, Sec. ii, para 16.

Note 3.

¹ *Nagamma v. Venkatachallam*, 4 Mys. L.R. 241 (Gift received after marriage passes to children, male and female.—This is no longer good law)

² See Sub Sec. (2) of this section.

the order of succession to all kinds of Stridhana is the same as given in II and III of this section below.

4. II. *Succession to Stridhana in default of issues.*—In the absence of children and grand-children, Stridhana passes to:

(iii) *her husband, if any, lawfully married to her,* and next, in his absence to ;

(iv) *her husband's heirs in order of succession to him.*

The Brahma or the 'approved' form and the Asura or the 'unapproved' form of marriage are both 'lawful' forms of marriage as opposed to unlawful marriages. The Mitakshara Law made a difference in the order of succession to the Stridhana of a female dying childless according as she was married in the approved or unapproved form. Under this Act no such distinction is made. Instead, the Act makes a distinction in the order according as the female was lawfully married or not. Her husband's heirs in the order of succession to him are to be determined according to Sec. 4 above. And as observed in *Chicknarasappa v. Govindappa*,¹ Sec. 4 in its application affects, in some circumstances, the succession to the property of a Hindu male who may have died even before this Act came into force.

Presumption as to nature of property.—In the absence of proof as to character of property left by a married woman, it should not be presumed to be of such a nature as to make her relatives on her maternal or paternal side her heirs.²

Legality of marriage.—Where it is proved that a marriage was performed in fact, the Court will presume that it is valid in law,³ and that the necessary ceremonies have been performed.⁴ There is a strong presumption in favour of

Note 4.

¹ 20 Mysore L.J. 377.

² *Thiminappa v. Lingee*, 16 Mys. L.R. 55.

³ *Inderun v. Rangaswamy*, (1869) 13 M.I.A. 141, 158.

⁴ *Monjilal v. Chandrabati*, 11 I.C. 502 : 38 Cal. 700 P.C. ; *Appibai v. Khimji*, 1936 Bom. 138 : 60 Bom. 455.

the validity of a marriage if from the time of the alleged marriage the parties are recognised by all persons as man and wife and are so described in important documents.⁵ The fact that a woman was living under the control and protection of a man who generally lived with her and acknowledged her children, raises a presumption that she is the wife of that man. But this presumption may be rebutted by proof of facts showing that no marriage could have taken place.⁶ A marriage brought about by force or fraud is altogether invalid⁷ and cannot be validated even under the principle of *factum valet*.⁸ Where a person sued for possession of his alleged wife stating that her marriage was performed in his village in the absence of the girl's parents, and the marriage was denied and fraud alleged, it was held that even if the marriage ceremony was gone through in such circumstances it was unlawful and invalid.⁹

Sister's son and husband's brother's son.—The husband's brother's son was held entitled to succeed to a lawfully married woman's Stridhana in preference to her sister's son.¹⁰

5. III. *Succession to unmarried woman's Stridhana.*—Where a woman (a) is unmarried, or (b) is not lawfully married, or (c) is lawfully married but childless and has no husband and his heirs at her death, her Stridhana property passes to her own relatives in the following order namely: (v) *Uterine brothers and sisters*¹; (vi) *mother*, (vii) *father*, (viii) *father's heirs in order of succession to the father*, and

Note 4.

⁵ 38 Cal. 700 P.C.; *Chandrasekharabhatta v. Sanna Putta*, 33 Mysore 279; 6 Mys. L.J. 168.

⁶ *Chellammal v. Ranganathan*, 34 Mad. 277; *Md. Abdul Samad v. Girdharilal*, 1942 All. 175, 179.

⁷ *Venkatacharyulu v. Rangacheryulu*, 14 Mad. 316; *S. Settappa v. Revanna*, 17 Mys. L.R. 33; *Channaveeriah v. Bhadramma*, 1 Mysore 41.

⁸ 17 Mys. L.R. 33.

⁹ 1 Mysore 41.

¹⁰ *Eraugappa v. Halappa*, 16 Mysore 99.

Note 5.

¹ *Nanji v. Kalyani*, 12 Mys. L.R. 64.

lastly to (ix) *mother's heirs in order of succession to the mother*. A sister inherits an unmarried woman's Stridhana in preference to her sister's son.²

Section 13.

Estate of heir to Stridhana property.—Any person, male or female, inheriting Stridhana property shall take therein a full estate.

SYNOPSIS

Note—(1) Estate of heir to Stridhana property.

1. *Estate of heir to Stridhana property*.—This section enunciates no new principle of law. It is a mere surplusage. Sec. 10 (2) (g) states that property inherited by a female from another female is her Stridhana and Sec. 11 (1) states that a female owning Stridhana has over it absolute powers both of enjoyment and disposition, that is, has a full estate in it. As regards the estate a male takes in inherited property whether inherited from a male or a female, it was never disputed that he always takes a full estate.

Section 14.

Gifts and bequests to have same effect for females as for males. A gift or bequest in favour of a female shall be construed in the same manner and shall have the same effect in all respects, as a gift or bequest in favour of a male.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Rule of construction of gift or bequest ; (3) Gift coupled with power of alienation ; (4) Use of words importing absolute ownership ; (5) Acceptance of gift ; (6) Bequest to unborn person ; (7) Estates unknown to Hindu Law.

1. *Scope of the section*.—This section adopts and states in express terms the law on the point that prevailed in Mysore when this Act came into force. The case law in Mysore did not recognise any distinction in the matter of the effect to be given to gifts and bequests, between males and females.¹

Note 5.

² *Mallamma v. Thimmanna*, 4 Mysore 130.

Note 1.

¹ *Kenchappa v. Lingappa*, 24 Mysore 249.

Their Lordships of the Privy Council observed in an early decision that in construing the will of a Hindu it is not improper to take into consideration what are known to be 'the ordinary notions and wishes of Hindus with respect to the devolution of property' and that where the donee is a female the Court is entitled to assume that the donor intended the donee to take a limited estate only, *unless* the contrary appears from the deed or will.² This view was not accepted in Mysore and it was held that where a Hindu makes a gift to a female relation there is no presumption of law that the donor intends to restrict the interests of the donee to those of the holder of a woman's estate.³ In a later case it was also laid down that unless the contrary intention is clear, a transfer of property *inter vivos* or by will in favour of a female will confer on the transferee all the rights of the transferor,⁴ which is exactly the rule that the next section, Sec. 15, states. In later decisions the Judicial Committee have made it clear that if words are used conferring absolute ownership upon the female, she enjoys the full right of ownership (including full right of alienation), *without their being* conferred by express and additional terms, unless the circumstances or the context were sufficient to show that such absolute ownership was not intended.⁵ Their Lordships say that it is possible by the use of words of sufficient amplitude to convey in the term of gift itself the fullest rights of ownership including the power to alienate, without such power being expressly conferred.⁶

Note 1.

² *Mahomed Shamool v. Shewakram*, (1874) 14 Beng. L.R. 226 P.C. [bequest to daughter]; see also *Rabutti v. Shibkunder*, (1854) 6 M.I.A. 1

³ *Kenchappa v. Lingappa*, 24 Mysore 249.

⁴ *Sanjivappa v. Nimba Jetty*, 34 Mysore 19 : 6 Mys. L.J. 379; *Basaviah v. Lingiah*, 32 Mysore 164 : 5 Mys. L.J. 57. Contra.—*Honnurappa v. Venkataramanappa*, 18 Mys. L.R. 261 [not good law].

⁵ *Bhaidas v. Baigulab*, 1922 P.C. 193 : 46 Bom. 153, 159.

⁶ *Ramachandra v. Ramachandra*, 1922 P.C. 80 : 45 Mad. 320; *Narasinga Rao v. Mahalakshmi Bai*, 1928 P.C. 156 : 50 All. 375; *Jagmohansingh v. Srinath*, 1930 P.C. 253 : 128 I.C. 270.

2. *Rule of construction of gift or bequest.*—In construing a will it is the duty of the Court to ascertain the intentions of the testator primarily from the words used.¹ Where the language is clear and consistent it must receive its literal construction, unless there is something in the will itself to depart from it, other than the mere fact that the donee is a woman.² ‘The Court is entitled to put itself into the testator’s armchair’ and consider the surrounding circumstances, his family relationships, the probability that he would use words in a particular sense, etc.³ But where the language of a will does not disclose a particular intention, ‘the court has no power’ as Mr. M. R. Jayakar observed, ‘to give effect to a hypothetical intention by supplying lacunæ in the will, and thereby making practically a new will for the testator’.⁴ Thus if a Hindu does not wish to grant an absolute estate to the donee who is a female, there is nothing to prevent his adding the necessary restrictive clauses in the deed. But if he does not do so, the Court will not supply that lacuna and make a new will for him on the assumption—for which there is no basis—that he intended to grant only a limited estate.⁵ Clear and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention.⁶ Words of known legal import must have their legal effect.⁷

Note 2.

¹ *Soorjemony Dossee v. Deenabandhu Mullick*, 6 M.I.A. 526, 551; *Narasimha v. Parthasarathy*, 37 Mad. 199, 221 P.C.; *Sashanka Bhusan v. Gopiballav*, 1935 Cal. 716; 63 Cal. 385.

² *Guruswami v. Sivakami*, 18 Mad. 347, 358 P.C.

³ 37 Mad. 199 P.C.

⁴ *Kartar Singh v. Dayal Das*, 1939 P.C. 201.

⁵ See *Kenchappa v. Lingappa*, 24 Mysore 249.

⁶ *Lalit Mohan v. Chukkan Lal*, 24 Cal. 384 P.C.; *Surajmani v. Rabi Nath*, 30 All. 84 P.C.; *Basant Kumar Basu v. Kiran Shankar*, 1932 Cal. 600.

⁷ 30 All. 84 P.C.; *Bissonauth v. Bamasoondery*, 12 M.I.A. 41, 59; *Nagamma v. Venkatachellam*, 4 Mys. L.R. 241; *Krishnamurthi v. Narasimha-char*, 2 Mys. L.R. 210; see also *Ram Narayan v. Ram Saran*, 46 Cal. 683 P.C.

3. *Gift coupled with power of alienation.*—Where a gift is coupled with a power of alienation, the Court infers an intention to grant an absolute estate. Thus where a testator bequeathed property to his daughter and son ‘for your maintenance’ with power of making alienation thereof by sale or gift, it was held that each of them took an absolute interest in a moiety of the property and the words ‘for your maintenance’ did not reduce the interest to one for life only.¹ Where a testator directed that his daughter should be entitled to his self-acquired properties with liberty to enjoy as she pleased all the right, title and interest that he himself possessed in them, it was held that the daughter took an absolute estate.² But where the donor bequeathed properties to his daughter stipulating that after her lifetime her sons were entitled thereto,³ and where the donor bequeathed to his younger son who was unmarried, a house which he is to enjoy and in case he is to die remaining single the property should go to another,⁴ it was held that the estates conferred were only life-estates.

4. *Use of words importing absolute ownership.*—Where the word ‘Malik’ (owner) or other words importing absolute ownership are used in a deed of gift or will, the donee irrespective of the sex will be deemed to get full proprietary rights including full rights of alienation, *unless* there is something in the context or in the surrounding circumstances to indicate that full proprietary rights were not intended to be conferred. Such words confer an heritable and alienable estate in the absence of clear words

Note 3.

¹ *Jogeswar v. Ramchandra*, 22 Cal. 670 P.C. ; *Kesarbai v. Hunsraj*, 30 Bom. 431, 442 P.C.

² *Sanjivappa v. Nimba Jetty*, 34 Mysore 19 : 6 Mys. L.J. 379.

³ *Gundappa v. Narasamma*, 39 Mysore 871 : 12 Mys. L.J. 378.

⁴ *Gangaji Rao v. Lingappa*, 7 Mys. L.J. 222.

indicating a contrary intention.¹ Where the testator constituted his wife 'Malik' of his property and added that she should leave 'whatever property might remain after her death as she liked' to two named daughters, it was held that she took an absolute estate, the second clause not constituting a valid trust in favour of the two daughters because its subject-matter, namely 'whatever might remain' was uncertain.² Where in a deed of settlement a person made a gift jointly to his daughter and son-in-law and stated 'I enjoin on you to perform our obsequies and enjoy the properties....', it was held that the estate created was one of joint-tenancy with right of survivorship *inter se* and not a tenancy-in-common.³

5. *Acceptance of gift.*—Under Sec. 123 T.P. Act, a gift of immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Delivery of possession is thus not necessary. But according to Sec. 122 T.P. Act, acceptance of the gift is an essential requisite to complete the gift. There must be clear and satisfactory proof of giving and similar proof of acceptance.¹ Where the donee is by reason of minority or other reason unable to himself give his assent, acceptance may be made on his behalf by some one else competent to act as agent.² Where the donor himself

Note 4.

¹ *Biswanath Prasad v. Chandika Prasad*, 1933 P.C. 67 : 55 All. 61 [case of gift]; *Lalitmohan v. Chukkan Lal*, 24 Cal. 384 P.C.; *Surajmani v. Rabi Nath*, 30 All. 84 P.C.; *Hitendra Singh v. Maharaja of Darbhanga*, 1928 P.C. 112 : 109 I.C. 858 [to hold property from generation to generation]; *Sarajubala v. Jyotir Moyee*, 1931 P.C. 179 : 59 Cal. 142 [gift to daughter as Malik]; *Nagamma v. Venkatachellam*, 4 Mys. L.R. 241 [Putra Poutradi Krame]; *Krishnamurthi v. Narasimhachar*, 2 Mys. L.R. 210 [to hold from generation to generation].

² *Bhaidas v. Baigulab*, 1922 P.C. 193 : 46 Bom. 153.

³ *Basaviah v. Lingayya*, 32 Mysore 164 : 5 Mys. L.J. 57.

Note 5.

¹ *Ramanna v. Kullappa*, 20 Mysore 158 F.B.

² *Deo Saran v. Deoki*, (1924) 3 Pat. 842, 849.

stands *in loco parentis* with regard to the minor donee, he can himself accept the gift on behalf of the minor. Thus where a person made a gift of land to his grandson, a minor, and in token of acceptance got the Khata transferred to the minor's name and himself continued in possession on behalf of the boy, it was held that there was valid acceptance of the gift by the donee.³

6. *Bequest to unborn person*.—A gift or bequest can be made only in favour of a person in existence and capable of taking when the gift or will takes effect, except in the case of an adopted child or a child in the womb, who are deemed to be in existence in contemplation of law.¹ However a gift or bequest in favour of an unborn person can be made if it is to take effect after a prior gift or bequest provided the whole of the remaining interest of the donor therein is granted to such unborn person.²

7. *Estates unknown to Hindu Law*.—A person cannot create a new form of estate or alter the line of succession allowed by law, for the purpose of carrying out his wishes. To attempt to institute a course of succession otherwise than the law directs, is assuming to legislate, which a person cannot do. Such a disposition will fail and give place to the ordinary law of inheritance.¹

Where a person confers by deed of gift or will successive estates, the estate of inheritance must be such as is known to the Hindu Law. An English estate tail is an estate unknown to Hindu Law and no person can succeed under

Note 5.

³ *Byramma v. Ranganna*, 32 Mysore 35 : 4 Mys. L.J. 281.

Note 6.

¹ *Rani Tarokeswar v. Soshi*, 9 Cal. 952 P.C. ; *Rudramma v. Sangabasappa*, 17 Mysore 145.

² *Kuppaswami v. Jayalakshmi*, 1934 Mad. 705 : 58 Mad. 15 ; *Bibavati Debi v. Mahendra*, 1938 Cal. 34 : (1937) 1 Cal. 400.

Note 7.

¹ *Tagore v. Tagore*, (1872) 9 Beng. L.R. 377 P.C.

a gift or will as heir to such an estate.² For the same reason estates conferred in an order of succession which excludes female heirs,³ or male heirs,⁴ or daughters and their sons,⁵ etc., are all held invalid. In such cases the first taker will take for his lifetime because the giver had at least that intention and on his death the property will revert to the testator's estate.⁶

The Crown or the Government may however create by grant such heritable estates which may not perhaps be known to ordinary Hindu or Mohomedan Law, and when once created the terms of the grants have got to be enforced by Courts.⁷

There is nothing in Hindu Law repugnant to the creation of joint tenancy in favour of persons other than coparceners by act of agreement of parties or as a family arrangement.⁸

Section 15

Bequests without words of limitation.—Where property, immovable or movable, is bequeathed to a female, she shall be entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for her.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Intention of the testator.

1. *Scope of the section.*—The rule enunciated by this section is a restatement of the law that prevailed in Mysore even prior to this Act. In *Sanjivappa v. Nimbajetty*,¹ the

Note 7.

² *Kristoromani v. Narendro*, 16 Cal. 383, 392 P.C.

³ *Rani Tarokeswar v. Soshi*, 9 Cal. 952 P.C.; *Bai Dhanalakshmi v. Hari-prasad*, 45 Bom. 1038.

⁴ *Kanhamina v. Kanhamli*, 32 Mad. 315.

⁵ *Purnasashi v. Kalidhan*, 38 Cal. 603 P.C.; *Suriya Rao v. Raja of Pittapur*, 9 Mad. 499 P.C. [heirs by adoption to be excluded]; *Manohar v. Bhupendranath*, 1932 Cal. 791 : 60 Cal. 452 [only some heirs excluded].

⁶ 9 Beng. L.R. 377 P.C.; *Manikyamala v. Nandakumar*, 33 Cal. 1306.

⁷ *Nawab Bahadur of Murshidabad v. K. I. Bank*, 59 Cal. 1 P.C.; *Khanī Begum Saheba v. Krishnanandagiri*, 44 Mysore 249 : 17 Mys. L.J. 305.

⁸ *Basaviah v. Lingiah*, 32 Mysore 164 : 5 Mys. L.J. 57.

Note 1.

¹ 34 Mysore 19 : 6 Mys. L.J. 379.

testator bequeathed all his self-acquired properties to his daughter stating that she should be at liberty to enjoy it as she pleased. It was held that those words conveyed not a limited right merely to enjoy the properties during her lifetime, but an absolute estate with the same rights in regard to enjoyment and disposal as the testator himself had. The rule was also enunciated in that case that unless a contrary intention is clear, a transfer of property will confer on the transferee all the rights of the transferor. The section speaks of a rule of construction of a disposition in favour of a female. The same rule applies also where the donee is a male.

2. *Intention of the testator.*—The intention of the testator is to be gathered primarily from the words used in the deed. If the intention is not clearly expressed either way or is not at all expressed, then this section says that the presumption is in favour of the whole interest of the transferor passing to the donee. If the intention is clearly expressed or indicated, then the intention will certainly be enforced to the extent and in the form which the law allows.¹ If only a restricted interest is intended to be conferred on the donee, clear and unambiguous words to that effect must be used by the testator. If not, the Court will not supply the lacuna and make a new will for him in its place.²

Where a widow in possession of her deceased husband's estate released in favour of her co-widow 'all rights' she may have in the estate, it was held that not only her life-interest in the property but her right of survivorship to her co-widow was also conveyed, because the words of disposition used clearly show that what was conveyed was all that she had or could have in the estate.³

Note 2.

¹ *Tagore v. Tagore*, 9 Beng. L.R. 377 P.C.; *Rani Tarokeswar v. Soshi*, 9 Cal. 952 P.C.

² *Kartar Singh v. Dayal Das*, 1939 P.C. 201.

³ *Kittamma v. Seshamma*, 43 Mysore 43 : 16 Mys. L.J. 232 ; *Nathulal v. Baburam*, 1936 P.C. 103 : 151 I.C. 33 [No words in award narrowing her estate].

CHAPTER XII
PART IV
WOMEN'S LIMITED ESTATE

Section 16

Nature of estate in property inherited from males.—In property other than Stridhana as defined in Sections 12 and 13, a female shall take a limited estate.

Proviso.—Provided that it shall be competent to a female having only a limited estate in any property to acquire a full estate therein by obtaining from the next reversioner a release of his entire interest in such property in her favour.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Stridhana as defined in Secs. 12 and 13 ; (3) Limited estate in any property ; (4) Acquisition of full estate by limited owner ; (5) Release by the next reversioner ; (6) Release of entire interest in any property.

1. *Scope of the section.*—It is open to a Hindu female to obtain an absolute title to property from a stranger. It is even possible for her to acquire such a title by adverse possession in her own right even as against coparceners or reversionary heirs. But, before this Act, it was held impossible for her to get rid of her limitations in property in which she has only a woman's estate and obtain a full estate therein, even if the whole body of immediate reversioners release their entire interest in her favour. Though the principle of surrender of her interest to the next reversioner was recognised, the corresponding principle of release in her favour by the next reversioners was inapplicable. Resort had to be had to the theory of consent by a reversioner and that too only to a certain extent. This disability is now removed and a female limited owner is enabled by the provisions of this section to obtain a release from the next reversioner or where there are more reversioners than

one, from the whole body of them next entitled to the reversion at the time, their entire interest in the property and thus acquire a full estate therein. The female limited owner will then become the full owner of the property over which her powers of enjoyment and disposition are as full and complete as that of a male owner of property. A release complying with the terms of the proviso to this section will be binding on the reversion as a whole and the actual reversioners whoever they might be have no right to impeach it.

2. *Stridhana as defined in Sections 12 and 13.*—Secs. 12 and 13 do not define Stridhana. It is Sec. 10 that defines Stridhana as property of every description belonging to a Hindu female other than that in which she has by law or under the terms of an instrument only a limited estate. The first para of this section needlessly repeats the same idea that is contained in Sec. 10 (1).

3. *Limited estate in any property.*—These words appear in this section as well as in all the other sections of Part IV, namely Secs. 17 to 21. For the purposes of this Act 'Limited Estate' means any estate other than a full estate.¹ Some well-known types of limited estates are these: (1) the limited estate of a female in property inherited from a male, technically known as the 'woman's estate,' (2) life estate, and (3) an estate terminable after a fixed period. The first type abovenamed is an anomalous estate unknown to other systems of law except the Hindu Law. The other types of limited estates come into existence only by act of parties and the rights of parties thereunder are governed by the instruments purporting to create them as well as the Transfer of Property Act. The provisions of Part IV are so worded as to apply to a female having any limited estate without distinction. But in the application of these provisions of Part IV to limited estates other than what is technically

Note 3.

¹ See definition in Sec. 3 (h) above.

known as the 'woman's estate' inconsistent and anomalous results ensue. (For a fuller treatment of this subject please see the Author's Article on 'Limited Estates under Act X of 1933' in 19 Mys. L.J., page 38.) For that reason, in these comments the application of these provisions to the 'woman's estate' alone is dealt with.

4. *Acquisition of full estate by limited owner.*—The proviso contained in the section is in the nature of an enabling provision. It enables a female having a woman's estate in any property to acquire a full estate in it by obtaining from the next reversioner at the time a release of his entire interest in such property. There will then be a merger as it were of her limited estate and the outstanding reversionary interest giving her a full estate in the property.

5. *Release by the next reversioner.*—Where the next immediate reversioner is a female, the next male reversioner also must join in the release. Thus where a person dies leaving his widow, daughters and daughter's sons, the daughters and daughter's sons together constitute the next reversioners to the estate in the hands of the widow. If only the daughters release their entire interest in favour of the widow, it will be binding only between the parties but not on the actual reversioners at the time of the widow's death. If the daughter's sons also join and release their entire interest, the widow's interest in the estate will become a full estate and the release will be binding on the whole body of reversioners presumptive as well as distant. Where a person dies leaving his widow, daughter's sons and brothers, the release by all the daughter's sons in favour of the widow is enough to give her a full estate in the property. The brothers need not join because they are not the persons next entitled to the reversion at the time. If the next reversioners at the time release their entire interest in favour of the limited owner, the concurrence of the remote reversioners or even their opposition does not count, so long as the release by the immediate reversioners is not a colourable transaction.

It is however essential that all the reversioners next entitled to the reversion at the time, where there are more than one, should release their interest. A release of the entire interest by some of the next reversioners alone will not bring about such a merger of the woman's estate and the entire outstanding reversion as to amount to a full estate in the property.

Where the persons next entitled to the reversion at the time release their entire interest in a property, the transaction will be binding on the reversion as a whole including those who may happen to be the actual reversioners. The reversioners who actually release their interest are in addition precluded from questioning the release being consenting parties thereto.¹

6. *Release of entire interest in any property.*—During the lifetime of the female limited owner the interest of a reversioner is a *spes successionis* or a mere chance of succession which is intransferable. It vests in him only on her demise in his lifetime.¹ This will not however come in the way of a release in favour of the female limited owner by the next reversioners at the time, as in the case of family arrangements between the widow and the reversioners involving transfers of *spes successionis*.²

Where the last male owner's estate in the hands of the female consists of many items of properties, the release need not be of the entire interest in the whole estate. The

Note 5.

¹ *Veeranke Gowda v. Kamba Maistry*, 12 Mysore 92; *Fateh Singh v. Thakur Rukmani*, 1923 All. 387 : 45 All. 339 F.B.; *Akkava v. Sayad Khan*, 1927 Bom. 260 : 51 Bom. 475; *Harendra Nath v. Hari Pada*, (1938) 2 Cal. 492.

Note 6.

¹ *Sarangapani v. Veerabhadra*, 16 Mysore 217; *Amrit Narayan v. Gaya Singh*, 45 Cal. 590, 603 P.C.; *Shakuntala Debi v. Kaushalya Debi*, 1936 Lah. 124 : 17 Lah. 356; *Lakshmi v. Anantarama*, 1937 Mad. 699 : 171 I.C. 7 F.B.; *Har Naraini v. Sajjan Pal*, 1940 P.C. 181 : 190 I.C. 184.

² *Ramgouda v. Bhausahab*, 1927 P.C. 227 : 52 Bom. 1; *Kittamma v. Seshamma*, 43 Mysore 43 : 16 Mys. L.J. 232.

entire interest in any property included in the estate may be released by the next reversioners so as to enlarge the female owner's right in that particular property into an absolute estate. She will then continue to be only a limited owner so far as the rest of the estate. She can obtain releases in her favour of different properties comprised in the estate on different occasions taking care, however, to see that all the next reversioners at the time of the particular transactions release their entire interest in the particular properties. The property in which she acquires a full estate by a release as provided in this section will pass on her death intestate to her own Stridhana heirs according to Sec. 12, and not to the next heir of the last full owner at the time.

The entire interest of the next reversioners must be obtained by release. If not, there will not be that merger of her woman's estate in any property and the entire reversionary right in it, which alone can amount to a full and absolute ownership of the property in the female owner. Thus a mere waiver by the next reversioners of their right to dispute an unauthorised alienation by the female limited owner will not give her a full estate in the property.

Section 17

Rights of holder of limited estate.—A female having only a limited estate in any property is nevertheless entitled—

(a) to the undisturbed possession of such property, and to absolute and unrestricted powers both of enjoyment and disposition *inter vivos* or by will over the income therefrom ;

(b) to manage the property at her unfettered discretion without being accountable to anyone else for her acts done in the course of such management ; and

(c) to lease, mortgage or otherwise alienate the property for any period not extending beyond the termination of her limited estate ;

and shall be competent—

(d) fully and completely to represent the property, including reversionary and other interests therein, in suits and proceedings affecting the same.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Limited owner's right to undisturbed possession of the corpus ; (3) Limited owner's absolute powers over the income ; (4) Adverse possession against female limited owner ; (5) Adverse possession by female limited owner ; (6) Clause (b) : Her right to manage the estate ; (7) Her unfettered discretion in management ; (8) Acts of management ; (9) Clause (c) : Temporary alienations of the corpus ; (10) Termination of her limited estate ; (11) Alienations extending beyond the termination of her limited estate ; (12) Clause (d) : Fully and completely represents the estate ; (13) Decree against limited owner whether binding on reversioners ; (14) Compromise and family arrangements by female limited owner ; (15) Power to acknowledge debts.

1. *Scope of the section.*—This section states in a concise way the law as to the rights of a holder of a woman's estate. A female limited owner is not a mere tenant for life, but is the owner of the property inherited by her, subject to certain restrictions on alienation and subject to its devolving upon the next heir of the last male owner upon her death.¹ The whole estate is vested in her and she represents it completely,² and so long as she is alive no one has any vested interest in the succession.³

2. *Limited owner's right to undisturbed possession of the corpus.*—The female limited owner's right in her woman's estate is of the nature of a right of property and her position is that of an owner of the whole estate subject to certain restrictions.¹ In this right as owner she is entitled to undisturbed possession of the corpus of the estate so long as she is alive.² She is also entitled to the most beneficial

Note 1.

¹ *Motappa v. Muniappa*, 6 Mys. L.J. 526 ; *Bijoy Gopal v. Krishna*, 34 Cal. 329 P.C.

² *Moniram v. Keri Kolitani*, 5 Cal. 776, 789 P.C.

³ *Sarangapani v. Veerabhadra*, 16 Mysore 217 ; *Janaki Ammal v. Narayanaswamy*, 39 Mad. 634, 637 P.C. ; *Amrit Narayan v. Gaya Singh*, 45 Cal. 590, 603 P.C. ; *Har Naraini v. Sajjan Pal*, 1940 P.C. 181 : 190 I.C. 184.

Note 2.

¹ *Janaki Ammal v. Narayanaswamy*, 39 Mad. 634 P.C.

² *Nittor Krishnappa v. Gopalakrishniah*, 11 Mys. L.R. 13 ; *Naranappa v. Lakshmiddevamma*, 15 Mys. L.R. 71 ; *Nadiga Bheema Rao v. Guru Rao*, 6 Mys. L.J. 537.

enjoyment of the whole estate and to its usufruct. Unless she commits waste or acts in a way injurious to the reversion or dangerous to the estate she cannot be deprived of the possession and management of the estate.³

3. *Limited owner's absolute powers over the income.*—A female limited owner's powers over the corpus are limited. But over the income therefrom she has absolute and unrestricted powers not only of enjoyment but also of disposition *inter vivos* or by will. Even apart from clause (a), the same result follows from Sec. 10 (2) e, according to which the income from her woman's estate is her Stridhana. Even where the possession of the estate after the last male owner's death has been withheld from her owing to litigation or other causes and is then handed over to her with the accumulated income therefrom, she will take the accumulated income as her Stridhana.¹ Such income having accrued after the last male owner's death, does not come to her as an inheritance from him. On her death, whereas the corpus of the estate passes to the next heir of the last male owner the income from the estate passes to her own heirs if she has not disposed of it otherwise.

As the income from the estate is her Stridhana, she can deal with it as she likes subject only to the general law relating to guardianship during minority,² and even her husband, if any, is not entitled to control the exercise of any of her powers in relation thereto.³ She is not bound to save it for the benefit of the reversioners. She is not a trustee for them.⁴ In a recent case Venkatrangiengar, J., observed: 'It is a well-established proposition that under Hindu Law a widow

Note 2.

³ 39 Mad. 634 P.C. ; *Hurrydoss v. Sreemutty*, (1856) 6 M.I.A. 433.

Note 3.

¹ *Soorjemoney Dosee v. Deenabandho Mullick*, 9 M.I.A. 123, 138 ; *Ishri Dutt v. Hansbutti*, 10 Cal. 324 P.C.

² See Sec. 11 (1).

³ See Sec. 11 (2).

⁴ *Viraraju v. Venkatarathnam*, 1939 Mad. 98 ; (1939) Mad. 226.

has absolute power of disposal over the income of the property inherited by her and she may spend the whole income just as she likes and she is not bound to make any savings and the same principle holds good even where there are debts which she is bound to pay, though she is no doubt bound to pay the interest on the debt where there is a sufficient surplus'.⁵ Nor is she bound to maintain the members of her husband's family or perform their marriage or other ceremonies out of the income. She can throw the burden of all these charges on the corpus of the property and sell or mortgage the same to meet those expenses, such expenses being regarded in law as for 'necessary purposes'.⁶

4. *Adverse possession against female limited owner.*—A female owner of a woman's estate has the right to undisturbed possession of the corpus of the estate till her death. She may lose this right to possession if a stranger holds the property adversely to her for twelve years or more. But the stranger is not entitled on that ground alone to claim it adversely as against the next reversioner on the death of the female. The next reversioner is entitled to recover possession of the property if it is immovable within twelve years and if it is movable within six years from the death of the female.¹ This is because the next reversioner's right to possession of that property arises for the first time on the death of the female. Where there has been no decree against the female limited owner or other act in the law in her lifetime depriving the reversionary heir of the right to possession on her death, the heir is entitled, after her death, to rely on Art. 141 Limitation Act for the purpose of the

Note 3.

⁵ *Durgappa v. Rudramma*, 18 Mys. L.J. 140, 149; *Subbiya v. Chikka Chamegowda*, 7 Mys. L.J. Notes 11; *Jagannadham v. Vigneswarudu*, 1932 Mad. 177; *Ramanandlal v. Damodar Das*, 1942 All. 110; 199 I.C. 369.

⁶ See Illustrations to Sec. 18; *Debi Dayal v. Bhanpratap*, 31 Cal. 433.

Note 4.

¹ *Ranchordas v. Parvati Bai*, 23 Bom. 725 P.C.; *Jaggo Bai v. Utsava Bai*, 1929 P.C. 166; 51 All. 439; Sec Appendix V.

determination of the question whether his title is barred by lapse of time.² But where there is a decree, founded upon the law of limitation, obtained against the female limited owner in her lifetime, it is binding on the reversionary heirs and they do not get the benefit of Art. 141 Limitation Act.³

5. *Adverse possession by female limited owner.*—Like any other person even a female limited owner can acquire property absolutely by adverse possession in her own right for twelve years or more. Such property will be her *Stridhana*.¹ But if she holds property adversely not in her own right, but as a widow representing her husband's estate, it will be an accretion to that estate and she takes no more than a woman's estate in that also.² A female member of a joint Hindu family may also acquire title to any family property by possession of it adversely to the coparceners.³

The possession of a female owner of property in which she has a woman's estate is not adverse to the reversioners. She cannot by any act or declaration of her own, while retaining possession of the estate, give her possession or estate a character different from that attaching to the

Note 4.

² 1929 P.C. 166 ; *Rajalakshmi Dasi v. Bholanath*, 1938 P.C. 254 : 177 I.C. 1 ; *Ramayya v. Lakshmayya*, 1942 P.C. 54 : 1942 A.L.J. 392 [But according to Lim. Act XIV of 1859, period of limitation against reversionary heir is to be reckoned from the same time as that against the widow if she had lived and brought the suit].

³ 1929 P.C. 166 ; *Katama Natchiar v. Raja of Sivaganga*, 9 M.I.A. 539 ; *Harinath v. Mothur Mohan*, 20 Cal. 8 P.C. ; *Vairhilinga v. Srirangath*, 1925 P.C. 249 : 48 Mad. 883.

Note 5.

¹ *Lacchan Kunwar v. Manorath Ram*, 22 Cal. 445 P.C. ; *Varada Pillai v. Jeevaiahnammal*, 53 I.C. 901 : 43 Mad. 244 P.C. ; see Sec. 10 (2) d.

² *Lajwanti v. Safachand*, 1924 P.C. 121 : 80 I.C. 788 ; *Parbati v. Ram Prasad*, 1933 Oudh 92 : 7 Luck. 320 ; *Md. Abdul Sumad v. Girdhari Lal*, 1942 All. 175.

³ *Satgur Prasad v. Kishore Lal*, 55 I.C. 486 : 42 All. 152 P.C. ; *Adya Shanka v. Mst. Chandravati*, 10 Luck. 35 : 150 I.C. 519.

possession or estate of a Hindu widow.⁴ Thus where two daughters inherited limited estates as co-heirs and one of them renounced her share in favour of the other daughter who enjoyed it and claimed adversely to the next reversioners, it was held that the possession of intermediate female heirs as heirs of the last male holder cannot as such become adverse against the reversioners.⁵

6. *Clause (b): Her right to manage the estate.*—As observed by the Privy Council, her position is that of an owner of the whole estate subject only to certain restrictions.¹ She is entitled to manage the property at her unfettered discretion within that limit, and being in the position of owner of the whole estate she is not accountable to any one else for her acts done in the course of such management.² Her power of management of the estate is said to be similar to the power of a manager of an infant's estate,³ and so long as she acts fairly to her expectant heirs, she must be allowed a reasonable latitude in the exercise of her powers.⁴

7. *Her unfettered discretion in management.*—The wording of Clause (b) suggests that the female having a woman's estate has a discretion in the management of the estate, over which none can sit in judgment or exercise control. Judicial decisions do not state it so broadly as that. She is no doubt allowed a reasonable latitude in the exercise of her powers of management, so long as her discretion is properly exercised and she acts fairly to the

Note 5.

⁴ *Shamlal v. Amarendro*, 23 Cal. 460; *Rasiklal v. Radha*, 1937 All. 268; 169 I.C. 586.

⁵ *Subramanyiah v. Nanjappa*, 15 Mysore 99.

Note 6.

¹ *Janaki Ammal v. Narayanaswamy*, 39 Mad. 634 P.C.

² *Ramanna Gouda v. Manjanna Gouda*, 6 Mys. L.J. 327.

³ *Hanuman Persaud v. Mst. Babooee*, (1856) 6 M.I.A. 393.

⁴ 6 Mys. L.J. 327; *Dodda Moga v. Narayana Bhatta*, 2 Mys. L.J. 157; *Durgappa v. Rudramma*, 18 Mys. L.J. 140, 153; *Venkaji v. Vishnu*, 18 Bom. 534; *Niamat Rai v. Deen Dayal*, 1927 P.C. 121; 101 I.C. 373.

expectant heirs.¹ Her 'unfettered discretion' is not absolute, but one subject to the limitations in Sec. 18 with which this section should be read. Ordinarily the Court will not interfere with her management, but it may step in if there is danger to the estate from the manner in which she is dealing with it.²

Though a female owning a woman's estate is not bound to apply the income of the estate in discharge of any debts due and binding on the estate, yet where there is a sufficient surplus of her net income she is bound to pay the interest due thereon.³ She cannot also ignore the charges legally payable out of the gross income, such as maintenance due to other members of the family or the Government revenue due on the estate, and thereby add to the debts left by the last male owner, so as to prejudice the reversioners.⁴

8. *Acts of management.*—A female owner of a woman's estate is not a trustee to the next reversioners.¹ So long as the corpus is safe she can use it in any way that will yield her the best income. She is entitled to invest the monies forming part of the estate in such securities as she thinks proper and to get the highest interest. She may lend the monies on a mortgage or otherwise. She cannot be compelled to invest them in Government securities alone. The court must take care not to interfere with or restrict

Note 7.

¹ *Dodda Moga v. Narayana Bhatta*, 2 Mys. L.J. 157; *Durgappa v. Rudramma*, 18 Mys. L.J. 140.

² *Hurrydoss v. Sreemutty*, 6 M.I.A. 433; *Katama Natchiar v. Dorai Singa*, 15 Beng. L.R. 83, 119 P.C.; *Janaki Ammal v. Narayanaswamy*, 39 Mad. 634 P.C.; *Ramanna Gouda v. Marjanna Gouda*, 6 Mys. L.J. 327.

³ 18 Mys. L.J. 140; *Jagannadhan v. Vighneswarudu*, 1932 Mad. 177; 55 Mad. 216.

⁴ *Lakshman v. Muneppa*, 6 Mysore 38; *Ramaswamy Chetti v. Mangai-karasu*, 18 Mad. 113; *Debi Dayal v. Bhanpratap*, 31 Cal. 433, 443; *Ramanandlal v. Damodardas*, 1942 All. 110; 199 I.C. 369; see also *Mayne's Hindu Law*, 10th edn., p. 787.

Note 8.

¹ *Viraraju v. Venkatarathnam*, 1939 Mad. 98; (1939) Mad. 226.

her in the full enjoyment of her rights, in order to prevent a possible danger.²

Where a case of necessity exists, she is not bound to raise money only by mortgaging the estate. She is at liberty to sell it. Even if a mortgage would have been more beneficial, her discretion is unfettered and if she and the purchasers acted honestly, the transaction cannot be questioned by the next reversioners.³ Where a Hindu widow in management sold an item of property and purchased another which in her opinion was in a better and more convenient place and there was no evidence to show that the discretion was not properly exercised, it was held that both the transactions were binding on the reversioners.⁴ But she cannot embark upon costly improvements to the estate and raise money for that purpose by so heavily encumbering the estate that the transaction ceases to be one which a prudent man would enter into for the benefit of the estate.⁵ Where there are members of the family bound to be maintained by the last male owner, she can in her discretion instead of paying monthly out of the income, allot some property to be enjoyed by the members during their lifetime.⁶ On the question whether she can alienate the estate to meet a demand that is certain to fall due but has not yet fallen due, it has been held in a well considered judgment delivered by Venkatrangiengar, J., that she would be right in providing before-hand for the payment of a debt incurred by the last male owner shortly to become due, and

Note 8.

² *Biswanath v. Khantomani*, 6 Beng. L.R. 747, 751.

³ *Narayani v. Doddachanna*, 7 Mysore 27 ; *Singam v. Draupadi*, 31 Mad. 153 ; *Balkrishna v. Hiralal*, 41 All. 338, 345.

⁴ *Dodda Moga v. Narayana Bhatta*, 2 Mys. L.J. 157.

⁵ *Doddanniah v. Nanja*, 32 Mysore 247 : 5 Mys. L.J. 118 ; *Soorappa v. Subbiah*, 18 Mys. L.J. 69.

⁶ *Lakshmanna v. Muneppa*, 6 Mysore 38 ; see also *Durgappa v. Rudramma*, 18 Mys. L.J. 140.

to alienate the estate for that purpose even though the debt was not immediately payable.⁷

9. *Clause (c): Temporary alienations of the corpus.*—A female limited owner is not a mere tenant for life but is the owner of the property inherited by her and so long as she is alive no one else has any vested interest in the succession.¹ She is also entitled to its undisturbed possession and enjoyment during her lifetime.² She has therefore a right to lease, mortgage, or otherwise alienate the corpus for any period *not extending beyond* the termination of her woman's estate. It is immaterial that such an alienation is or is not for a 'necessary purpose' as defined in Sec. 18 (2). Such an alienation of her life-interest may even be for no consideration. For instance, she may allot a property comprised in the estate to some one to be enjoyed freely for any period not extending beyond her lifetime. No reversioner has any right to question any alienation which does not extend beyond the termination of her woman's estate.

It will be seen that a sale is an alienation not contemplated in this clause, because a sale of the corpus cannot but extend beyond the termination of her woman's estate. So also a permanent lease.

10. *Termination of her limited estate.*—The woman's estate is not a life-estate but is an estate for life and it terminates on the death of the female owning it. The corpus will then pass to the next heir of the last male owner. Her woman's estate may terminate earlier if she surrenders or relinquishes her estate in favour of the next reversioner, according to Sec. 19. It will also terminate even before her death if she obtains a release in her favour, according

Note 8.

⁷ 18 Mys. L.J. 140, 154 ; *Yasoda v. Shamji*, 1930 Nag. 218.

Note 9.

¹ *Motappa v. Muniappa*, 6 Mys. L.J. 526 ; *Janaki Ammal v. Narayana-swamy*, 39 Mad. 634 P.C. ; *Har Naraini v. Sajjan Pal*, 1940 P.C. 181.

² See Sec. 17 (a).

to Sec. 16, of the entire interest of the next reversioner in the estate. In this last case however her woman's estate will enlarge into a full estate and hence will not in any way adversely affect her alienees. See also Sec. 21, Note 1.

11. *Alienations extending beyond the termination of her limited estate.*—Sec. 18 (1) *a* states in what circumstances a female owner of a woman's estate can make an alienation which will be binding on the estate not only for her life but also after the termination of her woman's estate. If the alienation of the corpus is for a 'necessary purpose' or is assented to or ratified or intentionally acquiesced in by the next reversioner it will be binding on the estate even beyond the termination of her woman's estate. An alienation not so made will not be binding on the reversioners,¹ but will nevertheless be binding on her so as to pass her own interest (which she has till the termination of her limited estate) to the alienee.² Even as regards the reversioners it is not absolutely void but voidable at their option. They may affirm it or treat it as a nullity.³ The interest of the alienee does not come to an end automatically at the death of the female. The alienation is binding until it is set aside in proper proceedings.⁴ It is not by advancing objections in execution that that relief could be obtained.⁵

12. *Clause (d): Fully and completely represents the estate.*—Except for certain restrictions on her power of alienation, the nature of a woman's right in her woman's

Note 11.

¹ *Harendranath v. Haripada*, (1938) 2 Cal. 492.

² *Motappa v. Muniappa*, 6 Mys. L.J. 526; *Chidambaramma v. Husainamma*, 39 Mad. 565; *Dhanji v. Dhuma*, 1924 Bom. 382 : 80 I.C. 234.

³ 6 Mys. L.J. 526 (affirmed); *Modhusudan v. Rooke*, 25 Cal. 1 (dc.); *Kondama Naiker v. Kandaswamy*, 1924 P.C. 56 : 47 Bom. 181; *Ramgouda v. Bhansaheb*, 1927 P.C. 227 : 52 Bom. 1; *Jugal Kishore v. Charu Chandra*, 1939 P.C. 159 : 181 I.C. 341 [affirmation by conduct].

⁴ 52 Bom. 1 P.C.; *Bijoy Gopal v. Krishna*, 34 Cal. 329 P.C.; *Puttabasaviah v. Madiiah*, 10 Mys. L.R. 77; *Subbiah v. Narasimhabhatta*, 18 Mys. L.R. 94; *Chidambarappa v. Papakka*, 27 Mysore 286.

⁵ 27 Mysore 286.

estate is like that of an owner.¹ The whole estate is vested in her for the time being and she is competent to fully and completely represent the estate including reversionary and other interests herein, in suits and proceedings affecting the same.² She may file suits on behalf of the estate, in the course of her management. She may also be sued against as representing the estate and a decree passed therein will bind the reversioners also, though they are not parties to the suit.³

13. *Decree against limited owner whether binding on reversioners.*—A decree passed against a female limited owner is binding on the reversioners even though they are not parties to the suit, provided (1) the suit is in respect of a debt or a transaction binding on the estate and (2) the decree is passed against her as representing the estate and not in her personal capacity.¹ It must in addition be shown that there was a fair trial of the right in that suit.²

Decree on compromise.—A decree passed against her though on a compromise or on an award binds the reversioners as much as a decree passed in a suit contested to the end, provided the compromise was entered into by her *bona fide* for the benefit of the estate and not for her personal advantage.³ That this is true as regards such matters

Note 12.

¹ *Janaki Ammal v. Narayanaswamy*, 39 Mad. 634 P.C.

² See also *Moniram v. Keri Kolitani*, 5 Cal. 776 P.C.

³ *Jugal Kishore v. Jotindra Mohan*, 10 Cal. 985 P.C. ; *Vaithilinga v. Srirangath*. 1925 P.C. 249 : 48 Mad. 883.

Note 13.

¹ *Vaithilinga v. Srirangath*, 1925 P.C. 249 ; *Madiwalappa v. Subbappa*, 1937 Bom. 458 : 172 I.C. 184 ; *Rajlakshmi Dasi v. Bholanath Sen*, 1938 P.C. 254 : 177 I.C. 1 [In her personal capacity] ; *Dyave Gowda v. Puttegowda*, 22 Mysore 230 ; *Pillamma v. Lakshmanachar*, 33 Mysore 367 : 6 Mys. L.J. 605 [Decree against her personally] ; *Lalit Mohan v. Dayamoyi*, 1927 P.C. 41 : 105 I.C. 469 [do.].

² *Katama Natchiar v. Raja of Sivaganga*, 9 M.I.A. 539, 608 ; *Rangarama v. Maratha Bank*, 31 Mysore 236 : 4 Mys. L.J. 180 ; 1925 P.C. 249.

³ *Ram Sarin Prasad v. Shyam Kumari*, 1922 P.C. 356 : 69 I.C. 71 ; *Mata Prasad v. Nageswar Sahai*, 1925 P.C. 272 : 47 All. 883 [Compromise of suit between widow and next reversioner].

as claims by creditors who are claiming to be paid out of the estate, but are not disputing the title of those beneficially interested in the estate, is beyond doubt.⁴ The question whether the same principle necessarily applies when the claim is one which disputes such title, was left open by the Privy Council in *Har Naraini v. Sajjan Pal*.⁵ A decree on an award⁶ or even a consent decree⁷ would be binding on the reversioners if the compromise was in the interest of the estate.

Burden of proof.—It is open to a reversioner to contest an agreement entered into by the limited owner with a judgment-creditor on which the consent order is passed by the Court, on grounds on which he could impeach any other agreement entered into by her with her creditors.⁸ The question whether in the case of compromise of a suit by a widow the burden lies absolutely and without qualification upon the reversioners impeaching it to show that it was not for the benefit of the estate, was left open by their Lordships of the Privy Council in *Ram Saran Prasad v. Shyam Kumari*.⁹

14. *Compromise and family arrangements by female limited owner.*—A compromise entered into by a female limited owner whether it is in the nature of a family arrangement or not, is binding on the reversioners though they are not parties to it, provided it amounts to a *bona fide* settlement of disputes in respect of the estate.¹ It binds

Note 13.

⁴ *Har Naraini v. Sajjan Pal*, 1940 P.C. 181 : 190 I.C. 184.

⁵ 1940 P.C. 181, 182.

⁶ *Shibdeo v. Ramprasad*, 1925 All. 79 : 46 All. 637, 644 ; *Rama v. Daji*, 43 Bom. 249.

⁷ *Subbammal v. Avudaiammal*, 30 Mad. 3.

⁸ *Rangarama v. Maratha Bank*, 31 Mysore 236 : 4 Mys. L.J. 180.

⁹ 1922 P.C. 356.

Note 14.

¹ *Khummi Lal v. Govind Krishna*, 33 All. 356 P.C. ; *Hiran Bibi v. Sohan Bibi*, 18 C.W.N. 929 P.C. ; *Ramsaran v. Shyam Kumari*, 1922 P.C. 356.

them quite as much as a decree passed against her as representing the estate.² The fact that the compromise involves an alienation of the estate does not affect its validity. An alienation which is the result of a compromise is within her powers of alienation and is deemed to be induced by necessity.³ But an alienation by way of compromise entered into between her and a person who had no *bona fide* claim at all to the estate when the compromise was entered into does not bind the reversioners.⁴ In *Ramayya v. Lakshmayya*,⁵ A the widow and B the mother of the last male owner divided his estate between themselves under an arrangement. Thereafter B gifted away the properties she obtained, to S, her daughter's son. Disputes having arisen between A and S as regards title to the properties in the possession of S, a settlement was effected between them by mediators, under which A got absolute title to a portion and the rest was retained by S. In the suit by the reversioners for recovery of possession of the properties comprised in the estate, it was urged in defence that the arrangement between A and S was in the nature of a *bona fide* settlement of family disputes. S had no rights to the properties except what he derived by the gift made in his favour by B. In those circumstances their Lordships of the Privy Council held that since it had not been shown that S had any competing title of his own in respect of the properties in dispute, there can be no basis for a valid family settlement between the parties which would bind the reversion. 'The true test to apply to a transaction which is challenged by the reversioners as an alienation not binding on them is, whether the alienee derives title from the holder of the limited interest or life tenant'.⁶

Note 14.

² 1922 P.C. 356.

³ *Ibid.*

⁴ *Obala Kondama v. Kandaswami*, 1924 P.C. 56 : 47 Mad. 181 ; *Mst. Rajpali Kunwar v. Surju Bai*, 1936 All. 507 : 58 All. 1041 F.B.

⁵ 1942 P.C. 54 : 1942 A.L.J. 392.

⁶ *Khunnilal v. Gobind Krishna*, 33 All. 356 P.C.

Where the widow or other female limited owner enters into a family arrangement or into a compromise which involves the alienation of the estate, a reversioner who has been a party to and has benefited by such transaction is precluded from questioning it.⁷ Even his descendants are precluded from questioning the transaction.⁸ Family arrangements need not evidence just claims which if pressed will prove well founded nor is it necessary that there should have been any previous disputes as to the rights of parties.⁹

15. *Power to acknowledge debts.*—It is provided by Sec. 21 (3) Mysore Limitation Act that an acknowledgement signed or a payment made in respect of any liability by a widow or other limited heir, shall be a valid acknowledgement or payment as the case may be as against a reversioner succeeding to such liability. But she has no power to burden the estate by alienating it to discharge a debt that is time-barred.¹

Section 18

(1) *Restrictions on powers of holder of limited estate.*—A female having only a limited estate in any property is not entitled—

(a) to alienate the property or any portion thereof for any period extending beyond the termination of her limited estate, except in cases where the alienation is made for a necessary purpose, or is assented to, ratified, or intentionally acquiesced in by the next reversioner ; or

Note 14.

⁷ *Veeranke Gowda v. Kamba Maistry*, 12 Mysore 92; *Kittamma v. Seshamma*, 43 Mysore 43; 16 Mys. L.J. 232; *Kanhiyalal v. Brijlal*, 47 I.C. 207; 40 All. 487 P.C.; *Mst. Hardai v. Bhagwan Singh*, 24 C.W.N. 105 P.C.; *Ramgouda v. Bhau Saheb*, 1927 P.C. 227; 52 Bom. 1; *Harendranath v. Haripada*, (1938) 2 Cal. 492.

⁸ 1927 P.C. 227; *Krishnagouda v. Ranganna*, 1 Mysore 1.

⁹ 43 Mysore 43; *Bhagwati Kuer v. Dhanukdhari*, 47 Cal. 466 P.C.; *Pokhar Singh v. Dulari*, 1930 All. 687; 52 All. 716.

Note 15.

¹ *Thimma v. Venkatesha Iyengar*, 6 Mys. L.R. 154.

(b) to waste or expend the *corpus* of the property, except where the property is movable and its consumption is necessitated by the insufficiency of the income available for her maintenance.

(2) “*Necessary purpose*”.—“Necessary purpose” in this section means any purpose which is for the benefit of the property or is proper or incidental to the position in life and society of the female owner concerned.

Illustrations.—(a) The reasonable personal requirements of the female owner, and the reasonable requirements of her children in respect of their upbringing, education, marriage and settlement in life, are necessary purposes.

(b) The reasonable expenses for the furtherance of the spiritual benefit of herself and her husband, customary gifts on ceremonial occasions, and reasonable acts of charity, are necessary purposes.

SYNOPSIS

Note.—(1) Scope of the section; (2) Legal necessity and ‘necessary purpose’; (3) Alienations by female limited owner; (4) Alienation for religious or charitable purposes; (5) Alienation for the benefit of the property; (6) Alienation for other necessary purposes; (7) Alienation by one of two or more co-widows; (8) Burden of proof of necessity or benefit; (9) Recitals of necessity; (10) Alienation assented to by the next reversioner; (11) Effect of Assent, Ratification or Intentional Acquiescence; (12) Alienation ratified by the next reversioner; (13) Intentional acquiescence by next reversioner; (14) Reversioners and their rights; (15) Persons entitled to impeach unauthorised alienations; (16) Persons entitled to sue for declaratory decree or for injunction; (17) Declaratory suits and injunction to restrain waste; (18) Reversioner’s suit and *res judicata*; (19) Payments by reversioner and right to reimbursement; (20) Reversioners right to redeem mortgage binding on the estate; (21) Consideration in part applied for necessary purpose; (22) Sub Sec. (1) b : Right to waste or expend the corpus.

1. *Scope of the section.*—The previous section dealt with some of the rights of a female holder of a woman’s estate. This section deals with the restrictions on her powers of alienation. The improvement in woman’s rights over property effected by this section consists partly in the widening of the scope of ‘necessary purposes’ for which she can alienate the corpus of the estate. Sub Sec. 1 (a) states that she can alienate the corpus or any portion thereof for any period extending beyond the termination of her limited estate (1) for a necessary purpose, or when it is (2) assented to or (3) ratified

or (4) intentionally acquiesced in by the next reversioner. Thus assent ratification or intentional acquiescence on the part of the next reversioner, instead of being merely presumptive evidence of necessity which is rebuttable, is treated as itself sufficient authority for an alienation by the female limited owner.¹

Sub Sec. 1 (b) states that she cannot waste or expend the corpus of the property if it is immovable, but can do so if it comprises of movable property and its consumption is necessitated by the insufficiency of the income available for her maintenance.

Sub Sec. (2) defines what a 'necessary purpose' means. The two illustrations to this section give an idea of the wide range of objects for which she can now alienate the corpus so as to bind the reversioners also. The scope of 'necessary purpose' is made wider than before, so as to cover all those requirements which are necessary or reasonable in the present conditions of social life. Until such time when Hindu women can be placed in a position of absolute equality with men in regard to the ownership and enjoyment of all kinds of property, this liberal enactment helps in a large measure, in the words of the Hindu Law Reforms Committee, 'to make the best of the span of life allotted to her as a responsible unit of civilised Hindu society'.²

2. *Legal necessity and 'Necessary purpose'.*—The expression 'legal necessity' it is said does not occur in the original works on Hindu Law. It was coined by English lawyers to concisely express the notion of the grounds which in Hindu Law render the alienations by a limited owner valid. It has a somewhat technical meaning. It does not mean actual compulsion, but the kind of pressure

Note 1.

¹ See also *H. L. R. Committee Report*, 1930, p. 191.

² *Ibid.*, p. 179.

which the law recognises as serious and sufficient.¹ In the absence of legal necessity, the receipt of full value for the alienation by a limited owner or even the *bona fides* of a transaction will not justify the transaction.² Whatever may be its origin, the expression 'legal necessity' has acquired a significant place in legal phraseology. It may be observed that while this expression is carefully avoided in this section without sufficient reason, it does find a place in Sec. 26.

Ever since the decision in Hanuman Persaud's case it has been recognised in British India and in Mysore that 'benefit of the estate' is something different from 'legal necessity' and that the power to alienate could be exercised not only in cases of legal necessity but also for the benefit of the estate.³ The expression 'necessary purpose' as defined in this section includes benefit of the property and seems to signify all objects for which a female limited owner can alienate so as to bind the estate and the reversionary interest therein. The expression seems to be wider in significance than what is connoted by legal necessity. 'The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it in the particular instance,' in the words of the Judicial Committee,⁴ are all indicated by the expression 'necessary purpose'.

3. *Alienations by female limited owner*.—A female owning a woman's estate can alienate the corpus or any portion thereof for any period extending beyond the

Note 2.

¹ *Ramsaran Prasad v. Shyam Kumari*, 1922 P.C. 356.

² *Rameswar v. Chandi Prasad*, 36 I.C. 499 : 43 Cal. 417 P.C.

³ *Bank of Mysore v. Veerappa*, 45 Mysore 26 : 18 Mys. L.J. 113, 128 ; *Durgappa v. Rudramma*, 18 Mys. L.J. 140 ; *Pichappa Chettiar v. Chokalingam*, 1934 P.C. 192 : 150 I.C. 802 ; *Hanumantha Rao v. Gade Subhaya*, 1936 P.C. 283 ; *Budhakaran v. Thakur Prasad*, 1942 Cal. 311 : (1942) 1 Cal. 19 ; *Bahadur Singh v. Girdhari Lal*, 1942 Nag. 39.

⁴ *Hanuman Persaud v. Mst. Babooee*, (1856) 6 M.I.A. 393 ; *Kameswar Prasad v. Run Bahadur*, 6 Cal. 843 P.C.

termination of her woman's estate even against the wishes of the next reversioners,

(1) for religious or charitable purposes, or

(2) for the benefit of the property, or

(3) for other objects included in the expression 'necessary purpose', for example, for legal necessity or for the protection of the property or for establishing or maintaining her interests therein.

4. *Alienation for religious or charitable purposes.*—In British India it is held following the Privy Council, that the power of a female limited owner to alienate the corpus for religious or charitable purposes is larger than that for purposes of legal necessity.¹ In Hindu Law two sets of religious acts are recognised, namely, (1) the performance of funeral and periodical Shraddha ceremonies of the deceased owner, which are considered as essential or obligatory to the salvation of the deceased, and (2) other acts which although not essential or obligatory are still pious observances which conduce to the bliss of the deceased's soul. The power of alienation of the female with reference to the first class is wider than that for the second class. In the one case if the income of the property or the property itself is not sufficient to cover the expenses, she is entitled to sell the whole of it. In the other case she can alienate only a small portion of the estate for the pious purposes.² Though under this Act no distinction is made as regards the power of alienation of the female for religious or charitable purposes and for other purposes of necessity, the principles enunciated by the Privy Council in *Sardar Singh v. Kunj Behari Lal*³ are worthy of being adopted in Mysore.

Note 4.

¹ *Collector of Masulipatam v. Cavely Venkata*, 8 M.I.A. 529, 551 ; *Sardar Singh v. Kunj Behari Lal*, 1922 P.C. 261 : 44 All. 503, 511.

² 1922 P.C. 261 ; *Panachand v. Manohar Lal*, 42 Bom. 136 : 43 I.C. 729 ; *Thakur Prasad v. Mst. Dipa Kuar*, 1931 Pat. 442 : 10 Pat. 352.

³ 1922 P.C. 261.

Though a Hindu widow may alienate the corpus for the spiritual welfare of her husband, it has been held that she cannot alienate any portion of it to secure a similar spiritual benefit for herself.⁴ At any rate in Mysore after this Act came into force no such narrow and unconvincing distinction can be made. According to Illustration (b) to this section the reasonable expenses for the furtherance of the spiritual benefit of herself and her husband are equally necessary purposes.

5. *Alienation for the benefit of the property.*—The power of a widow or other female limited heir to alienate the estate inherited by her, for purposes other than religious or charitable is analogous to that of a manager of an infant's estate. That power is a limited and qualified one. As observed by the Privy Council: 'It can only be exercised rightly in a case of need or for the benefit of the estate. But where in the particular instance the charge is one that a prudent owner would make in order to benefit the estate, the *bona fide* lender is not affected by the precedent mismanagement of the estate. *The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it* in the particular instance is the thing to be regarded.'¹ In *Palaniappa v. Devasikhamony*,² their Lordships of the Privy Council observed that the expression 'benefit of the estate' is difficult of a precise definition, but that 'the preservation however, of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions from injury or deterioration by inundation, these and such like things would obviously be benefits.'

Note 4.

¹ *Thimma v. Venkatesha Iyengar*, 6 Mys. L.R. 154; *Vignananda v. Putta Nanjappa*, 24 Mysore 41; *Puran Dai v. Jai Narain*, 4 All. 482; *Ram Kawal v. Ram Kishore*, 22 Cal. 506; *Shamdevi v. Birhadra*, 43 All. 663.

Note 5.

¹ *Hanuman Persaud v. Mst. Babooee*, 6 M.L.A. 393, 423; see also *Sanganna v. Chinna Venkatappa*, 25 Mysore 47.

² 39 I.C. 722; 40 Mad. 709, 718 P.C.

This passage has given rise to a conflict of views in British India. One view is that for a transaction to be of benefit to the estate it should be of a defensive character calculated to protect the estate from threatened danger,³ and the other view is that it is sufficient if it is such that a prudent owner would have carried out, with the knowledge that was available to him at the time of the transaction.⁴ So far as Mysore is concerned, in two noteworthy judgments delivered by Abdul Ghani, Off. C.J., in *Bank of Mysore v. Veerappa*⁵ and by Venkatrangiengar, J., in *Durgappa v. Rudramma*,⁶ the learned Judges have expressed agreement with the view taken in the latter class of cases. In support of this view the Officiating Chief Justice also points out that their Lordships of the Privy Council have in their own words placed 'the benefit to be conferred upon it' as distinct from 'the danger to be averted' and from 'the pressure on the estate'.

A Hindu widow like the manager of a Hindu family must be allowed a reasonable latitude in the exercise of her powers of alienation. She must be allowed a reasonable latitude to make such arrangements in respect of the estate as may be beneficial to it and except in cases where her discretion is not properly exercised or she acts unfairly to the expectant heirs, an alienation which is really beneficial to the estate should be held to be binding on the reversioners.⁷ Thus she would be right in providing beforehand for payment of a debt incurred by her husband shortly to become due and to alienate the estate for that purpose

Note 5.

³ *Hurry Mohan v. Ganesh*, 10 Cal. 823 F.B.; *Inspector Singh v. Kharak*, 1928 All. 403 : 50 All. 776 ; *Ragho v. Zaga*, 1929 Bom. 251 : 53 Bom. 419.

⁴ *Jagat Narain v. Mathuradas*, 50 All. 969 ; *Nagindas v. Mahomed Yusuf*, 46 Bom. 312 ; *Ramnath v. Chiranjilal*, 1935 All. 221 : 57 All. 605 F.B. ; *Venkateswara Rao v. Ammayya*, 1939 Mad. 561 ; see also *Hemraj v. Nathu*, 1935 Bom. 295 : 59 Bom. 525 F.B.

⁵ 45 Mysore 26 : 18 Mys. L.J. 113, 128.

⁶ 18 Mys. L.J. 140, 156 ; see also *Dodda Moga v. Narayan Bhatta*, 2 Mys. L.J. 157 ; *Sanganna v. Chinna Venkatappa*, 25 Mysore 47.

⁷ 2 Mys. L.J. 157 ; 18 Mys. L.J. 140 ; *Venkaji v. Vishnu*, 18 Bom. 534.

even though the debt is not immediately payable.⁸ Where she sold an item of property and purchased another which in her opinion was in a better and more convenient place, it was held that it was beneficial to the estate.⁹ But an alienation of family property for the purpose solely of purchasing another property,¹⁰ or for the payment of premium for a lease of another property,¹¹ or for investing the proceeds of the sale in Levadevi (money dealings),¹² are not for the benefit of the estate. A permanent lease or one for a long term may or may not be beneficial to the property depending on the circumstances of each case.¹³ An alienation of the estate solely for investing the price so as to bring in a larger income than that derived from the probably safer and certainly more stable property is not for the benefit of the estate.¹⁴ A mortgage of property for making necessary and reasonable additions and improvements to the estate is for the benefit of the estate,¹⁵ but not one for effecting costly improvements to the estate,¹⁶ An attempt to augment the resources or to provide for more luxuries for the family by embarking on a business after

Note 5.

⁸ *Durgappa v. Rudramma*, 18 Mys. L.J. 140.

⁹ 2 Mys. L.J. 157; *Jagmohan v. Prg Ahir*, 47 All. 452; *Jado Singh v. Nathu Singh*, 48 All. 592; 1926 All. 511; but see *Hemraj v. Nathu*, 59 Bom. 525 F.B.

¹⁰ *Ram Bilas v. Ramyad*, 58 I.C. 303; *Sellappa v. Suppan*, 1937 Mad. 496; (1937) Mad. 906; *Ramkaran v. Baldeo*, 1938 Pat. 44; 173 I.C. 292.

¹¹ *Manna Lal v. Karu Singh*, 1919 P.C. 108; 56 I.C. 766.

¹² *Muddachari v. Kenchayya*, 29 Mysore 131; 2 Mys. L.J. 70.

¹³ *Ramanna Gouda v. Manjanna Gouda*, 6 Mys. L.J. 327 [Permanent lease held not beneficial]; *Dayamani v. Shrinivas*, 33 Cal. 842 [do.—held beneficial]; *Bijoy Gopal v. Girindranath*, 41 Cal. 793 P.C. [Lease for 60 years—Held beneficial].

¹⁴ *Palaniappa v. Devasiklamony*, 40 Mad. 709 P.C.; *Sital Prasad v. Ajablal*, 1939 Pat. 370; but see *Bahadur Singh v. Girdhari Lal*, 1942 Nag. 39.

¹⁵ *Narasimhamurthy v. Singlachar*, 45 Mysore 242; 18 Mys. L.J. 304; *Ratnam v. Govindarajulu*, 2 Mad. 339.

¹⁶ *Doddanniah v. Nanja*, 32 Mysore 247; 5 Mys. L.J. 118; *Soorappa v. Subbiah*, 44 Mysore 332; 18 Mys. L.J. 69; *Mayne's Hindu Law*, 10th edn., p. 788.

contracting a loan is not one which can be treated as for the benefit of the family.¹⁷ An alienation for the purpose of carrying on a speculative suit is certainly not for the benefit of the estate.¹⁸ The expenses incurred by a limited owner 'in defending her life estate in her husband's property constituted such a charge as to make a sale therefor by her binding on the reversioners.'¹⁹ It has been held in Mysore that on principle, there is no difference between the case of a widow in possession defending her title to her husband's estate and that in which she sues to enforce her rights to possess such estate, and that therefore the necessary expenses incurred by her for such litigation are properly chargeable to the estate.²⁰ Delivering the judgment in the case,²¹ Nageswara Iyer, J., observes: 'What a widow in such circumstances does by successfully asserting her title is to preserve the estate, in which she claims a limited estate, for the benefit of the reversioners after her lifetime.'

6. *Alienation for other necessary purposes.*—Besides alienations for the benefit of the property dealt with above, a female limited owner can also alienate in a case of need, that is, for legal necessity, having regard to the actual pressure on the estate or the danger to be averted.¹ The cost of taking out probate or letters of administration or succession certificate in respect of the estate, the payment of government

Note 5.

¹⁷ *Bank of Mysore v. Veerappa*, 18 Mys. L.J. 113, 129; but see *Bahadur Singh v. Girdhari Lal*, 1942 Nag. 39.

¹⁸ *Indar Kuar v. Lalta Prasad*, 4 All. 532; *Bhagwandas v. Mahadeo*, 45 All. 390.

¹⁹ *Amjad Ali v. Moniram*, 12 Cal. 52.

²⁰ *Shanmugam Chetty v. Jagadambal*, 44 Mysore 487; 18 Mys. L.J. 522, 528; see also *Bhimareddi v. Bhaskar*, 6 Bom. L.R. 628; *Radha Kissen v. Nauratanlal*, 6 Cal. L.J. 490; *Karimuddin v. Govinda Krishna*, 31 All. 497 P.C.; *Mayne's Hindu Law*, 10th edn., p. 787.

²¹ 44 Mysore 487; 18 Mys. L.J. 522.

Note 6.

¹ See *Hanuman Persaud's case*, 6 M.I.A. 393.

revenue and arrears if any and other charges and debts due from the estate,² maintenance of herself and persons whom the last male owner was liable to maintain,³ the marriage expenses of the relations of the last male owner such as his daughter, etc.,⁴ are purposes for which she can alienate the estate. As indicated in the two illustrations to this section, the reasonable personal requirements of the female owner and the reasonable requirements of her children in respect of their upbringing, education, marriage and settlement in life, and the reasonable expenses for the customary gifts on ceremonial occasions and for acts of charity are all necessary expenses for which she can burden the corpus of the estate so as to bind the reversioners. See also the undermentioned cases.⁵

7. *Alienation by one of two or more co-widows.*—The position in British India all along and that in Mysore prior to this Act was as follows:—Their Lordships of the Privy Council observe: ‘The estate of two widows who take their husband’s property is one estate. The right of survivorship is so strong that the survivor takes the whole property to the exclusion of daughters of the deceased widow. They are in the strictest sense coparceners and between undivided coparceners there can be no alienation by one without the consent of the other.’¹ Hence one of them cannot prejudice the right of survivorship of the other by

Note 6.

² *Chikkamuniappa v. Akkiya*, 12 Mysore 264; *Jiban v. Brojo Lal*, 30 Cal. 550 P.C.; *Ganesh Lal v. Khetra Mohan*, 1926 P.C. 56; 95 I.C. 839.

³ *Lakshmanappa v. Muneppa*, 6 Mysore 38; *Subbamma v. Narasimhabhatta*, 36 Mysore 176; 9 Mys. L.J. 287.

⁴ *Narasimhaiah v. Narasiah*, 8 Mys. L.R. 71; *Subbamma v. Venkateshia*, 20 Mysore 293; *Dyavamma v. Siddegowda*, 20 Mys. L.J. 359.

⁵ *Aswathiah v. Subbaraya Setty*, 2 Mysore 62 [Alienation for daughter’s son’s marriage—Not binding]; *Gopalakrishna Sastry v. Rama Rao*, 7 Mys. L.J. 462 [Expenses of funeral ceremonies must come out of estate in whose-soever’s possession it may be].

Note 7.

¹ *Bhagwan Deen v. Myna Bae*, 11 M.I.A. 487, 515.

alienations, even though for a necessary purpose.² This is so even where the co-widows are in enjoyment of their separate shares after a partition.³ However where the arrangement between them is such that each can alienate without the consent of the other or that each has relinquished her right of survivorship to the portions of the estate held by the other, an alienation by each cannot be questioned by the other, though of course the next reversioner's right to question it is not in any way affected.⁴ Otherwise, ordinarily, one of them acting without the authority or consent of the other cannot affect a valid alienation although the alienation may be for legal necessity.⁵

Position in Mysore under this Act.—The principles enunciated in *Cheluvamma v. Thimmiah*² are not now applicable because there has been a change in the law in this matter. Two or more widows inheriting their husband's estate take in equal shares without rights of survivorship according to Sec. 4 (5) and not a joint estate with rights of survivorship.⁶ The property contemplated in this Sec. 18 is obviously the share which each widow inherits as her share in her husband's estate, and each widow can validly alienate her share for a 'necessary purpose' under the powers conferred on her by this section, even without the authority, consent or acquiescence of the other co-widows.⁶

8. *Burden of proof of necessity or benefit.*—A female limited owner's power to alienate the corpus so as to bind the reversioners also is a limited and qualified power. The

Note 7.

² *Chaluvamma v. Thimmiah*, 6 Mys. L.J. 392; *Gajapathi v. Pasupathi*, 16 Mad. 1 P.C.

³ 16 Mad. 1 P.C.; *Gauri Nath v. Gaya Kuer*, 1928 P.C. 251 : 111 I.C. 485.

⁴ *Dulhin Parbati v. Baijnath*, 1936 All. 300 : 14 Pat. 518; *Ammaniamma v. Periaswami*, 74 I.C. 58 : 45 Mad. L.J. 1; *Thakuramani Singh v. Dai Rani*, 33 Cal. 1079.

⁵ 6 Mys. L.J. 392; 1928 P.C. 251; *Mayne's Hindu Law*, 10th edn., p. 651.

⁶ *Dyavamma v. Siddegowda*, 20 Mys. L.J. 359.

burden of making out the facts which authorise such an alienation is on the alienee. The alienee is bound to inquire into the necessity for the alienation and to satisfy himself as well as he can that it is necessary in the particular instance. If he does so inquire and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge.¹ If the alienation is impeached, the burden lies on the alienee to prove *either* (1) that there was necessity or benefit in fact,² *or* (2) that he made proper and *bona fide* inquiry as to its existence and was reasonably convinced as to the existence of such necessity or benefit.³ If he fails to prove that there was necessity in fact, he must at least prove that he made *bona fide* inquiry and that the facts represented to him were such as, if true, would have justified the alienation.⁴ Where a widow borrowed to meet the expenses of Upanayanam of a son adopted by her to her husband, the fact that the adoption was subsequently adjudged invalid did not, it was held, affect the character of the debt as one covered by necessity.⁵

In no case however is the alienee bound to see that the money paid by him is actually applied to meet the necessity, because he can rarely have the means of controlling the

Note 8.

¹ *Hanuman Persaud v. Mst. Bahooee*, 6 M.I.A. 393, 423.

² *Banga Chandra v. Jagat Kishore*, 44 Cal. 186 P.C. ; *Bajrang Singh v. Govind Prasad*, 1935 Oudh 373 : 11 Luck. 11 ; *Hanumanthiah v. Ningamma*, 8 Mysore 188 ; *Nadig Bheema Rao v. Guru Rao*, 6 Mys. L.J. 537 ; *Muni-venkatamma v. Chikkarangamma*, 46 Mysore 475 : 19 Mys. L.J. 271.

³ *Bhagwat Dayal v. Devidayal*, 35 Cal. 420 P.C. ; *Obala Kondama v. Kandaswamy*, 1924 P.C. 56 : 47 Mad. 181 ; *Kesar Singh v. Santokh Singh*, 17 Lah. 824 ; *Ramanand Lal v. Damodardas*, 1942 All. 110 : 199 I.C. 369 ; *Narasimhiah v. Narasiah*, 8 Mys. L.R. 71 ; *Chikkarudrappa v. Rangiah*, 11 Mys. L.R. 270 ; *Subbamma v. Venkateshia*, 20 Mysore 293 ; 46 Mysore 475.

⁴ *Amarnath v. Achan Kuar*, 14 All. 420, 429 P.C. ; *Ananthram v. Collector of Etah*, 40 All. 171 P.C. ; *Bednath v. Rajeswari*, 1937 Oudh 406 : 13 Luck. 357 ; 1942 All. 110.

⁵ 20 Mysore 293.

actual application, unless he himself enters upon the management.⁶

There is no difference between the burden of proof when it is desired to support an alienation by the manager of a joint estate and that made, for instance, by a female limited owner who has only a similar limited power of disposal.⁷ The same rules as regards burden of proof apply also to a transferee from an alienee.⁸

The fact that there are recitals in a deed, as to the necessity or justification for the alienation does not throw the burden of proof upon the alienor.⁹

9. *Recitals of necessity.*—Recitals in deeds of alienation of the existence of necessity are admissible in evidence,¹ but they are not evidence by themselves of the facts.² There must be other evidence *aliunde* to substantiate the existence of necessity.³ Recitals as to necessity in the document evidencing the alienation and the oral testimony of the alienee himself are by themselves insufficient to prove legal necessity for the alienation.⁴ Unless all the necessary and possible details are furnished by the alienee he cannot

Note 8.

⁶ *Hanuman Persaud's case*, 6 M.I.A. 393, 423; 35 Cal. 420 P.C.; *Sham Sundar v. Ach in Kanwar*, 21 All. 71 P.C.; *Maheswar v. Ratan Singh*, 23 Cal. 766 P.C.; 8 Mys. L.R. 71; *Mari v. Basappa*, 10 Mys. L.R. 68.

⁷ *Ananthram v. Collector of Etah*, 40 All. 171 P.C.

⁸ 1942 All. 110; *Obala Kondama v. Kandaswamy*, 1924 P.C. 56.

⁹ *Kishorilal v. Bhawani Shankar*, 1940 P.C. 145; 189 I.C. 433.

Note 9.

¹ *Banga Chandra v. Jagat Kishore*, 36 I.C. 420; 44 Cal. 186 P.C.; *Ninge Gowda v. Kulle Gowda*, 22 Mysore 166.

² *Brijlal v. Indar Kunwar*, 36 All. 187 P.C.; *Bednath v. Rajeswari*, 1937 Oudh 406; *Nagappa v. Chowdappa*, 29 Mysore 153; 2 Mys. L.J. 284.

³ *Raj Lakhi Debia v. Gokulchandra*, 13 M.I.A. 209; 36 All. 187 P.C.; *Vasonji v. Chanda Bibi*, 37 All. 369 P.C.; *Debendranath v. Nagendranath*, 1933 Cal. 900; 60 Cal. 1158; *Muhammed v. Brij Behari*, 46 All. 656; *Talkad Rama Rao v. Thammanna*, 44 Mysore 357; 17 Mys. L.J. 347, 349.

⁴ 29 Mysore 153; 2 Mys. L.J. 284.

be said to have given sufficient evidence of the nature of the transaction.⁵

Even in the case of an old transaction the burden of proof is not shifted to the reversioner who impeaches the alienation, but the Courts would approach the evidence as to necessity with a more indulgent mind than when the alienation took place a few years before suit.⁶ Where the best evidence as regards the representations made are not forthcoming owing to long lapse of time, or on account of the death of the original contracting alienee the evidence of actual inquiry by him has become impossible, the recital coupled with circumstances which are such as would justify a reasonable belief that an inquiry would have confirmed its truth, is sufficient evidence to support the deed.⁷

The absence of a recital of necessity in a deed of alienation by a limited owner does not vitiate the alienation. It may be proved by other evidence.⁸ However in some cases the non-recital of circumstances leading to the alienation or the nature of the recitals of necessity made have been commented upon. See the undermentioned cases.⁹

10. *Alienation assented to by next reversioner.*—To support an alienation of the whole or part of the corpus of the estate by a female limited owner, the alienee has to prove that there was necessity or benefit in fact or that he made *bona fide* inquiries which reasonably convinced him of its existence. If either of these is not proved, it is held by the Privy Council that the consent of such reversioners

Note 9.

⁵ *Nadig Bheema Rao v. Guru Rao*, 6 Mys. L.J. 537.

⁶ 6 Mys. L.J. 537 ; 17 Mys. L.J. 347.

⁷ *Subbanna v. Narasimhabhatta*, 36 Mysore 176 : 9 Mys. L.J. 287 ; *Chintamanibhatta v. Rani of Wadhwan*, 43 Mad. 541 P.C. ; *Rayaneswar v. Chandiprasad*, 43 Cal. 417 P.C. ; *Banga Chanara v. Jagat Kishore*, 44 Cal. 186 P.C. ; *Ramanandlal v. Damodardas*, 1942 All. 110 ; 199 I.C. 369.

⁸ *Womesh Chander v. Digumbare*, (1865) 3 W.R. 154 ; *Thimmannabhatta v. Rama Bhatta*, 1938 Mad. 300 ; 1942 All. 110 [Sometimes a presumption may be raised].

⁹ *Siddappa v. Lingappa*, 16 Mys. L.J. 32, 38, 40 ; 17 Mys. L.J. 347.

as may fairly be expected to be interested to dispute the transaction will be held to afford presumptive proof which, if not rebutted by contrary proof, will validate the transaction as a right and proper one.¹ The question as to the exact nature of the presumptions that should be raised in such circumstances was left open in *Munivenkatamma v. Chikkaranganna*.² In considering in any particular case what would be a reasonable inquiry for a lender to make, Reilly, C.J., observed in the above case: 'If his inquiries took him so far as to assure him that not only did the limited owner represent that the loan which was asked for was for a definite and probable purpose of necessity or benefit, but that the next reversioner.....who if surviving would be the absolute owner, joined in making that representation, then the lender would have gone as far as reasonably he could be required to go in pursuing his inquiries'. This course will in practice serve to avoid the last alternative regarding presumptive legal necessity suggested in *Rangaswamy v. Natchiappa*.¹

11. *Effect of assent, ratification or intentional acquiescence*.—Judicial decisions in British India hold that mere consent by the next reversioner does not validate an alienation, that it is not conclusive proof of the existence of necessity but only raises a presumption of its existence and that the actual reversioner at the limited owner's death is not precluded from questioning the alienation but that the burden lies on him to show that there was no legal necessity.¹ The position in this respect in Mysore, it is submitted, has

Note 10.

¹ *Rangaswamy v. Natchiappa*, 50 I.C. 498 : 42 Mad. 523 P.C.

² 46 Mysore 475 : 19 Mys. L.J. 271, 273.

Note 11.

¹ *Rangaswamy v. Natchiappa*, 42 Mad. 523 P.C. ; *Bajrang v. Manokarnika*, 30 All. 1. P.C. ; *Mahomed Said v. Kunwar*, 1927 All. 835 : 50 All. 75 ; *Rai Bajrang v. Rameswar*, 1937 Oudh 189 : 12 Luck. 684 ; *Ramamurthy v. Bheemasankar Rao*, 1938 Mad. 433 : (1938) Mad. 688 *Allah Diya v. Sona Devi*, 1942 All. 331 : 1942 A.L.J. 443.

been altered by Sub Sec. (1) (a). The wording of the exception in Sub Sec. (1) (a) is very significant. As observed by Reilly, C.J., "when we are interpreting an exception in a statute or an exception to a law, though we must be careful not to stretch the exception more than is strictly proper, we must also be careful to give it its full effect, and we must not add words to it in order to narrow it down to something less than its plain meaning".² The wording of the exception in Sub Sec. (1) (a) places assent, ratification or intentional acquiescence by the next reversioner in the same level and effect as an alienation for a necessary purpose and unless words of limitation which are not there are read into the section, the effect of the next reversioner's assent to or ratification of or intentional acquiescence in an alienation cannot be placed at anything less than that afforded by a 'necessary purpose'. There is also another way of looking at an alienation made with the consent of the whole body of the next reversioners. It may be construed as amounting to two transactions, namely (1) *either* a surrender or relinquishment in favour of the next reversioners according to Sec. 19, *or* a release by the next reversioners in favour of the female limited owner according to Sec. 16 which makes her a full owner of the property, and then (2) an alienation by the full owner to the alienee, both of which cannot be questioned by the actual reversioners whoever they may be. It will thus be seen that in Mysore the assent ratification or intentional acquiescence on the part of the whole body of next reversioners does not merely help to raise a presumption of the existence of necessity, but is itself sufficient authority for the alienation by the female limited owner. This interpretation is also in conformity with the purpose of this legislation, namely of enlarging the rights of women in property by removing the restrictions on her powers of alienation.³

Note 11.

² *Anniah v. Bank of Mysore*, 43 Mysore 652 : 17 Mys. L.J. 60, 64.

³ See also *H. L. R. Committee Report*, 1930, p. 181.

The quantum of consent necessary depends upon the facts of each case. Ordinarily the whole body of persons next entitled to the reversion at the time must assent to the alienation to give full validity to it. In any case if there is a fair proof of concurrence of the next reversioners, it may suffice to raise a presumption that the transaction is a fair one.⁴

Where the next immediate reversioner is a female, whether she takes a full estate or a limited estate, her assent alone is not enough.⁵ In such a case the next male reversioner must also give his assent or ratify or affirm the alienation, if it should bind the whole body of reversioners.⁶ Even where an alienation is in excess of her powers, those reversioners male or female who are consenting parties to it or affirm it specifically or by conduct are however precluded from challenging it.⁷ The consent or ratification must however be made with full knowledge of the circumstances.⁸

12. *Alienation ratified by the next reversioner.*—An alienation by a female limited owner without legal necessity or benefit is not altogether void, but only voidable at the instance of the next reversioner. The next reversioner may elect to affirm it. If he does so it will have the effect of ratifying the transaction and will be as effective as if he had assented to it at the time of the transaction itself.¹ Where

Note 11.

⁴ See 30 All. 1 P.C. ; *Raj Lakhi Debia v. Gokulchandra*, 13 M.I.A. 209 ; *Bijoy Gopal v. Girindranath*, 41 Cal. 793 P.C.

⁵ *Motappa v. Muniappa*, 6 Mys. L.J. 526 ; *Vinayak v. Govind*, 25 Bom. 129, 134 ; *Bepin Behari v. Durga Charan*, 35 Cal. 1086.

⁶ See Definition of 'Next Reversioner' in Sec. 3 (i).

⁷ 6 Mys. L.J. 526 [daughter affirming alienation by her mother] ; *Akkawa v. Sayad Khan*, 51 Bom. 475 ; *Ramgouda v. Bhau Saheb*, 1927 P.C. 227 ; *Jugal Kishore v. Charoo Chandra*, 1939 P.C. 159 : 181 I.C. 341 [Affirmation by conduct—Receiving rent under lease by widow, after her death].

⁸ *Hemendranath v. Haripada*, (1938) 2 Cal. 492.

Note 12.

¹ *Madhu Sudan v. Rooke*, 25 Cal. 1. P.C. ; *Bajrangi v. Manokarnika*, 30 All. 1 P.C. *Motappa v. Muniappa*, 6 Mys. L.J. 526.

the whole body of reversioners next entitled to the reversion at the time ratify an alienation, it will bind the whole body of reversioners, that is, even the actual reversioners at the death of the limited owner. The next reversioners may ratify the transaction either before or even after the reversion has fallen into possession.² Where a widow who had leased out properties for 11 years died before that period and it was proved that the reversioners had affirmed the lease by their conduct by receiving rent under it, it was held that the lease was binding on them even after the death of the widow.³ Affirmation may be signified even by consenting to a decree in a suit by the alienee against them based on the alienation by the limited owner.⁴

13. *Intentional acquiescence by next reversioner*.—The next reversioner's assent to an alienation by the female limited owner must be a conscious and intentional exercise of his right with full knowledge of the circumstances.¹ A consent obtained by a misrepresentation of the facts is ineffective. Mere attestation of a deed does not necessarily import assent to or intentional acquiescence in an alienation made therein.² There must be some overt indication to show that the next reversioner's acquiescence is intentional and not merely passive. Thus the next reversioner's failure for any reason to sue or take proceedings to set aside the alienation in excess of the limited owner's powers cannot amount to an intentional acquiescence by them so as to support the alienation.

Note 12.

² *Rangaswamy v. Natchiappa*, 42 Mad. 523 P.C. ; *Akkawa v. Sayadkhan*, 1927 Bom. 260 : 51 Bom. 475.

³ *Jugal Kishore v. Charoo Chandra*, 1939 P.C. 159 : 181 I.C. 341.

⁴ See *Motappa v. Muniappa*, 6 Mys. L.J. 526 [daughter consenting to decree without challenging alienation by widow].

Note 13.

¹ *Hemendranath v. Haripada*, (1938) 2 Cal. 492.

² *Sham Sundar v. Achan Kunwar*, 21 All. 71, 80 P.C. ; *Hari Kishen v. Kashi Prasad*, 42 Cal. 876 P.C. ; *Banga Chandra v. Jagat Kishore*, 44 Cal. 186 P.C. ; *Thakur Prasad v. Mt. Dipa Kuar*, 1931 Pat. 442 : 10 Pat. 352 ; *Allah Diya v. Sona Devi*, 1942 All. 331 : 1942 A.L.J. 443.

14. *Reversioners and their rights.*—The heirs of the last male owner, who would be entitled to succeed to his estate on the death of a female limited heir, if they be then living, are called 'reversioners'. The interest of a reversioner is not a vested interest. It is a *spes successionis*. The reversioner's interest becomes concrete only on demise of female owner.¹ It is neither alienable nor heritable.² His guardian if he happens to be a minor cannot bargain with it.³

Where there are several reversioners entitled to succeed successively to the last male owner, as for instance daughter's sons, father, brothers, etc., no one of them claims through or derives his title from another reversioner, but each derives his title from the last full owner.⁴

15. *Persons entitled to impeach unauthorised alienations.*—Anyone who is a reversioner to the estate held by the female limited owner or any person who has any interest in the succession is entitled to impeach unauthorised alienations by her. But a stranger to the reversion or one who claims adversely to her cannot impeach them.¹ Thus where a female limited owner mortgaged a part of the estate to A and then made a gift of it to B and after her death when B sued A for redemption A challenged the gift to B, it was held that A being a stranger to the reversion could not impeach the gift.²

Where none of the parties before Court was shown to be a reversioner questioning the mortgage as not having

Note 14.

¹ *Har Naraini v. Sajjan Pal*, 1940 P.C. 181.

² *Amrit Narain v. Ganga Singh*, 44 I.C. 408 : 45 Cal. 590 P.C.; *Venkat-narayana v. Subbammal*, 38 Mad. 406, 410 P.C.; *Lakshmi v. Anantarama*, 1937 Mad. 699 F.B.; *Sarangapani v. Veerabhadra*, 16 Mysore 217.

³ 45 Cal. 590 P.C.; 1940 P.C. 181.

⁴ *Bahadur Singh v. Mohar Singh*, 24 All. 94 P.C.; *Lala Soniram v. Kanhiya Lal*, 35 All. 227 P.C.

Note 15.

¹ *Subbiah v. Narasimhabhatta*, 18 Mys. L.R. 94.

² *Sitaram v. Khandu*, 45 Bom. 105; *Bipat Mahton v. Kulpat*, 1934 Pat. 498 : 13 Pat. 182.

been for legal necessity it was held that the Court should not go into the question of justification of the mortgage.³ Even where an alienation could be properly objected to, the reversioner cannot resume possession of the property in the lifetime of the female limited owner, because his right to possession can arise only on her death in his lifetime.⁴

16. *Persons entitled to sue for declaratory decree or for injunction.*—The person who sues for an injunction or for a declaratory decree and impeaches an alienation is in the first instance bound to show that the property alienated by the female belongs to the estate of the last male owner to whom he claims as reversioner.¹ Then without a determination whether he is the next or immediate reversioner he is not entitled to the declaration that the alienation is not valid beyond her lifetime.² The burden is upon the objector to show that he is the nearest reversioner and that his claims are superior to that of any other person.³ Thus where there were a daughter and two daughter's sons who were nearer reversioners, a suit by a distant reversioner was held not maintainable.⁴

But where a distant reversioner was in possession of the property and his interests were invaded and the nearest reversioners were found to be in collusion with the opposite party, he was held entitled to resist the alienation.⁵ A distant

Note 15.

³ *Siddiah v. Chairman, C. I. T. Board*, 7 Mys. L.J. 131.

⁴ *Siddananjamma v. Balenanjappa*, 4 Mysore 62 ; *Lakshmanna v. Muneppa*, 6 Mysore 38 ; *Dyavamma v. Siddegowda*, 20 Mys. L.J. 359.

Note 16.

¹ *Appajibhatta v. Channe Gowda*, 28 Mysore 40.

² *Naranappa v. Lakshmiddevamma*, 15 Mys. L.R. 71; *Chicknarasappa v. Govindappa*, 20 Mys. L.J. 377.

³ *Venkatramayya v. Subramanya Sastri*, 39 Mysore 137 ; 12 Mys. L.J. 32 ; *Javitri v. Gundan Singh*, 1927, All. 767 ; 49 All. 779 ; *Mst. Barfo v. Narain Prasad*, 1937 Oudh 243 ; 167 I.C. 72.

⁴ *Marakka v. Venkatappa*, 3 Mysore 64 ; *Motappa v. Muniappa*, 6 Mys. L.J. 526 ; 20 Mys. L.J. 377, 383.

⁵ *Lutchmana v. Dasappa*, 2 Mys. L.R. 188.

reversioner can also maintain a suit if the nearest reversioners refuse without sufficient reason to institute proceedings or have concurred in the act alleged to be wrongful⁶ or are unable to sue from poverty or other cause.⁷

17. *Declaratory suits and injunction to restrain waste.*— Though a reversioner's right in the lifetime of the limited owner is a bare chance of succession, he has a right to demand that the estate be kept free from danger during its enjoyment by her, and if necessary, to sue to restrain her from wasting or expending the corpus of the estate.¹ He may also bring a suit for a declaration that an alienation effected by her is not binding on the reversion.² The right to sue for these reliefs is based on the danger to the inheritance common to all the reversioners alike.³ Hence where a reversioner brings a suit for such a relief in a representative capacity, on his death the right of suit survives not to his personal heirs but to the next presumptive reversioner.⁴ The reversioners however are not bound to institute the suit or take action in the lifetime of the limited heir. They may wait for the estate to vest in them on her death and then sue the alienee for possession of the property.⁵ A suit by a reversioner for a bare declaration that he is the next reversioner entitled to succeed when the limited owner

Note 16.

⁶ 6 Mys. L.J. 526 ; *Rani Anand Kuar v. Court of Wards*, 6 Cal. 764 P.C. ; *Venkatnarayana v. Subbammal*, 38 Mad. 406, 412 P.C. ; *Ghisaiwan v. Mst. Rajkumari*, 43 All. 534.

⁷ *Mataprasad v. Nageswar*, 1925 P.C. 272 : 47 All. 883.

Note 17.

¹ *Janakiammal v. Narayanaswamy*, 39 Mad. 634, 638 P.C. ; *Abdul Awal v. Uday Chandra*, 1942 Cal. 167 : 45 C.W.N. 998 ; *Nagabhushanabhatta v. Visweswarayya*, 43 Mysore 557 : 16 Mys. L.J. 399.

² *Venkatanarayana v. Subbammal*, 38 Mad. 406, 410 P.C. ; *Muniappa v. Narasamma*, 2 Mysore 58 ; *Amiya v. Manchamma*, 4 Mysore 1.

³ 1942 Cal. 167 : 45 C.W.N. 998.

⁴ *Gangamma v. Narasimhia*, 1 Mys. L.J. 103 ; *Rameswar v. Ganapath Debi*, 1936 Lah. 652 : 166 I.C. 753.

⁵ *Bijoy Gopal v. Krishna*, 34 Cal. 329 P.C.

dies, is not maintainable, though in that capacity he may sue for the protection of the estate.⁶

18. *Reversioner's suit and res judicata*.—There is no privity of estate between one reversioner and another. Each derives his title directly from the last full owner,¹ and to a certain extent the act or omission of one does not affect the other. It is however held that a suit by the next reversioner against the limited owner and the alienee for a declaration that the alienation is not binding on the reversion is a representative suit and a decree fairly and properly passed in such suit operates as *res judicata* between the whole body of reversioners on the one hand and the alienee and his representatives on the other.² So also, where in a suit by a reversioner against the limited owner in respect of the estate, an issue is finally decided, that issue is *res judicata* in any subsequent suit by any reversioner.³

19. *Payments by reversioner and right to reimbursement*.—Although a reversioner has no present interest in the property left by the last male owner, yet he is substantially interested in the protection or devolution of the estate and has a right to see that the estate is not endangered by the acts or omissions of persons who are dealing with the estate for the time being.¹ Hence if he makes a payment of kadayam in respect of lands brought to sale for arrears due thereon from the limited owner, and thereby saves them from being

Note 17.

⁶ 39 Mad. 634 P.C. ; 1942 Cal. 167 ; *Desu Reddiar v. Srinivasa Reddi*, 1936 Mad. 605 ; 59 Mad. 1052 ; *Yale Gowda v. Borayya*, 8 Mysore 148.

Note 18.

¹ *Lala Soniram v. Kanhiya Lal*, 35 All. 227 P.C. ; *Bahadur Singh v. Mohar Singh*, 24 All. 94 P.C.

² *Kesho Prasad v. Sheo Prakash*, 1924 P.C. 247 ; 46 All. 831 ; *Pramatha v. Bhuban*, 49 Cal. 45 ; *Mst. Seethabai v. Hari*, 1938 Nag. 401 ; (1938) Nag. 498.

³ *Venkatanarayana v. Subbammal*, 38 Mad. 406 P.C. ; *Mata Prasad v. Nageshar*, 1925 P.C. 272 ; 47 All. 883.

Note 19.

¹ *Brindaban v. Sureswar*, 10 Cal. L.J. 263.

sold, he will be entitled under Sec. 69 Contract Act to be reimbursed.² He is a person interested in making the payment. But where a widow mortgaged a property for a purpose not binding on the reversioners and the mortgagee paid some arrears of kadayam in respect of it after the death of the widow, it was held that at the time of payment the mortgagee had ceased to be a person interested in the property and was therefore not entitled to reimbursement from the reversioners.³

20. *Reversioner's right to redeem mortgage binding on the estate.*—In some circumstances a reversioner can even have a right to redeem a mortgage binding on the estate in the lifetime of the limited owner. Even though he cannot voluntarily claim to redeem a mortgage made by the last male owner or to institute a suit for that purpose, yet he has got a sufficient interest in the property to discharge the mortgage to prevent the loss of the property and if he does so it will be inequitable to refuse to create a charge on the property for the sum so advanced by him.¹ The creation of such a charge is not affected by the mere fact that he asserted a title hostile to that of the widow and paid the amount for the protection of his own interest, and a charge so created will enure to the benefit of even a stranger who advanced the money to the reversioner who actually discharged the mortgage.¹ But where the intention of the reversioners and the payment of the mortgage money (whether thereby it was intended to acquire the mortgagor's right to redeem or the mortgagee's interest in the property),

Note 19.

² *Srinivasa Iyengar v. Mallappa*, 21 Mysore 218; *Nagabhushanabhatta v. Visweswarayya*, 43 Mysore 557:16 Mys. L.J. 399; *Narayana Rao v. Madappa*, 41 Mysore 339:14 Mys. L.J. 353 [Reversioner can apply under O. 21 R. 89]; *Abdul Awal v. Uday Chandra*, 1942 Cal. 167 [Reversioner can apply under O. 21 R. 90].

³ *Chandayya v. Basave Gowda*, 15 Mysore 329.

Note 20.

¹ *Narayana Rao v. Madappa*, 41 Mysore 339:14 Mys. L.J. 353.

was done not with a view to save the property for the estate or to defeat any act of collusion on the part of the widow with the mortgagee which would result in its never being redeemed thereafter unless it was done during her lifetime, it was held that there was no such special circumstance which could give the reversioner a right to redeem.²

21. *Consideration in part applied for necessary purpose*.—Where a limited owner makes an alienation of the estate for necessity and the alienee pays a fair and adequate price and acts in good faith and after *bona fide* inquiry as to the necessity for the alienation, the mere fact that part of the price is not proved to have been applied to purposes of necessity would not invalidate the alienation. In such a case the alienation will be upheld unconditionally whether the part not proved to have been applied to purposes of necessity is considerable or small.¹ In *Krishnadas v. Nathuram*,² their Lordships of the Privy Council observe that where a sale has been held to be justified but there is no evidence as to the application of a portion of the purchase money, a presumption arises that it has been expended for proper purposes and for the benefit of the estate, because the purchaser is not bound to see to the application of the price. But where it is clearly proved as a fact that a portion of the purchase money is not utilised for purposes of necessity, it would be inequitable to allow the vendee to retain the property without refunding that portion of the

Note 20.

² *Thimmappa v. Kerojee*, 36 Mysore 190 : 9 Mys. L.J. 297.

Note 21.

¹ *Krishnadas v. Nathuram*, 1927 P.C. 37 : 49 All. 149 [Case of sale by manager of Hindu family] ; *Suraj Bhan Singh v. Sah Chain Sukh*, 1927 P.C. 244 ; *Ram Sundar Lal v. Lachmi Narayan*, 1929 P.C. 143 : 51 All. 430 ; *Hanuman Persaud v. Mst. Babooee*, 6 M.I.A. 393, 423 ; *Medai v. Nainar*, 1922 P.C. 307 : 74 I.C. 604 ; *Subbamma v. Venkateshiah*, 20 Mysore 293 ; *Anka v. Siddegowda*, 22 Mysore 53 ; *Basappa v. Subbiah*, 11 Mys. L.J. 146 ; *Dyavamma v. Siddegowda*, 20 Mys. L.J. 359.

² 1927 P.C. 37.

consideration.³ Where an alienation by the father was only in part justified by necessity and the alienee advanced the money knowing the extent of the necessity, in a suit by the undivided son the Court directed a partition and delivery of his share to him (son), on payment to the alienee of his proportionate share of the amount to the extent of which the alienation was supported by necessity.⁴

Legal necessity in part.—Where however a sale is supported by necessity only in part, relief will have to be granted on special terms. If the portion justified by necessity is smaller than the portion not justified, the alienee is compensated by a charge on the property to that extent, and the plaintiff whose outstanding interest in the estate is larger gets possession of the property on payment of the said sum if and when the reversion opens in his favour.⁵ If on the other hand the amount justifiable bears a larger proportion to the sale amount, the possession of the alienee is left undisturbed and he will be directed to pay the plaintiff on the termination of the life estate the amount by which the purchase money exceeds the sum for which necessity was proved.⁶ In *Dyavamma v. Siddegowda*,⁷ a property worth Rs. 500 or more was sold for Rs. 233 only, but it was found that the sale was for a necessary purpose. The Court declared that the alienation was supported by necessity only to the extent of Rs. 233 and that after the lifetime of the limited owner the reversioner would be entitled to get possession of the property on payment of Rs. 233 to the purchaser or his representatives in interest.

Mortgage.—The rule stated in the case of sales does not fully apply to the case of mortgages, for in the case of

Note 21.

³ *Basappa v. Subbiah*, 11 Mys. L.J. 146, 149.

⁴ *Anka v. Siddegowda*, 22 Mysore 53.

⁵ *Veeregowda v. Narasappa*, 33 Mysore 409 : 6 Mys. L.J. 395 ; *Shanmugam Chetty v. Jagadambal*, 44 Mysore 487 : 18 Mys. L.J. 522, 532.

⁶ 6 Mys. L.J. 395.

⁷ 20 Mys. L.J. 359.

a mortgage it is possible to borrow the precise amount required to meet the necessity unlike in the case of a sale. The mortgage can therefore be redeemed on payment to the mortgagee of such sum only as was required for the purpose of necessity.⁸ In *Munivenkatamma v. Chikranganna*,⁹ where a female limited owner had borrowed money by mortgaging the estate, a decree was passed in favour of the mortgagee only for that part of the mortgage money that he was found justified in advancing. In *Srinivasan v. Puttegowda*,¹⁰ a decree was passed binding the interest of the contesting coparcener only to the extent of the mortgage amount that was found justified by legal necessity.

22. *Sub Sec. (1) (b): Right to waste or expend the corpus.*—A female limited owner is not entitled to waste or expend the immovable property forming part of the corpus. She is entitled to its possession and at best to so enjoy it as to get the best income therefrom so long as she does not cause the corpus to waste or deteriorate. If she commits waste or does any act injurious to the reversion, the reversioners may institute a suit for an injunction restraining her from wasting it. The Court will take the management of the estate out of her hands if the act complained of constitutes ‘danger to the property’.¹

Movable property.—Where the income from the whole estate which may consist of movable and immovable properties is not enough for her maintenance, she is, according

Note 21.

⁸ *Srinivasan v. Puttegowda*, 45 Mysore 228; *Thakur Jai Indra v. Khairati Lal*, 1928 Oudh 465; *Dwarkaram v. Bakshi*, 1935 Pat. 178; 14 Pat. 595; *Durga Prasad v. Jewdhari Singh*, 1936 Cal. 116; 62 Cal. 733.

⁹ 46 Mysore 475; 19 Mys. L.J. 271, 276.

¹⁰ 45 Mysore 228; 18 Mys. L.J. 276, 281 [Mortgage by all adult coparceners for Rs. 8,000 of which Rs. 3,386 was not proved to be binding on the family].

Note 22.

¹ *Hurrydos v. Sreemutty*, 6 M.I.A. 433; *Katama Natchiar v. Doraisinga*, 15 Beng. L.R. 83, 119 P.C.; *Janakiammal v. Narayanaswamy*, 39 Mad. 634 P.C.

to this clause, entitled to expend or consume the movable property constituting the corpus of the estate. Even in such a case she cannot waste the immovable properties constituting the estate. She may alienate them however, if it is necessary, and the alienation will bind the reversioners. Where immovable property inherited by a widow from her husband was compulsorily acquired for a public purpose and a sum of money was paid as compensation therefor, it was held that it was as if she had inherited the value of the property as movable property from her husband.² If therefore the income from that money is not enough for her maintenance she can spend the money itself and leave nothing for the reversioners to inherit.

Section 19

Surrender or relinquishment by holder of limited estate.—

A surrender or relinquishment by a female having a limited estate in any property in favour of the next reversioner is not invalid or ineffective merely because it does not extend to the whole of the property comprised in the limited estate, or because the transaction provides for or contemplates some benefit to such female owner in addition to maintenance, or any other return or consideration :

Provided that no such surrender or relinquishment shall effect any alienation of property made by her prior thereto.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Surrender of portion of the estate ; (3) Surrender in favour of female reversioner ; (4) Surrender contemplating some benefit to the limited owner ; (5) Surrender invalid for other reasons ; (6) Surrender following prior alienations ; (7) Surrender followed by adoption.

1. *Scope of the section.*—Judicial decisions have held that a female limited owner may surrender her entire woman's estate in favour of the next reversioners at the time so as to accelerate their succession to it. The surrender must however be of her whole interest in the whole estate and

Note 22.

² *Nittoor Krishnappa v. Krishniah*, 11 Mys. L.R. 13.

must be in favour of the nearest reversioner or of the whole body of reversioners next entitled at the time, if there be more than one.¹ The principle on which it rests is the effacement of the female limited owner—an effacement which otherwise is only effected by actual death or by civil death—which opens the estate to the next heirs at the time, of the last male owner. It is also held that the surrender must be a *bona fide* one and not a device to divide the estate.²

This section modifies the law on the point to a considerable extent. According to this section a surrender or relinquishment by a female limited owner is not invalid or ineffective merely because (1) only a part of her woman's estate is surrendered or (2) the transaction contemplates or provides for some benefit to her in addition to maintenance or other return. The proviso to the section states that alienations of property made by her prior to the surrender shall remain unaffected by the surrender.

2. *Surrender of a portion of the estate.*—A female owning a woman's estate can after this Act came into force, validly surrender only a portion of her woman's estate in favour of the next reversioners at the time. It will accelerate their succession to that portion of the estate only. With respect to the rest of the estate they continue to be next reversioners with a bare chance of succession. The surrender must be in favour of all the persons next entitled to the reversion at the time and not in favour of some of them only.¹ In *Radharani v. Brindarani*,² a release by the mother in favour

Note 1.

¹ *Rangaswamy v. Natchiappa*, 42 Mad. 523 P.C.; *Manjayya v. Seshagiri*, 1925 Bom. 129; 49 Bom. 187; *Chamaraj Urs v. Veerajammannee*, 4 Mysore 29; *Nadig Bheema Rao v. Guru Rao*, 6 Mys. L.J. 537.

² 42 Mad. 523 P.C.; *Bhagwat Koer v. Dhanukdhari*, 47 Cal. 466, 483 P.C.; *Sureswar v. Mahesrani*, 1921 P.C. 107; 48 Cal. 100.

Note 2.

¹ See also *Nadig Bheema Rao v. Guru Rao*, 6 Mys. L.J. 537 [Surrender in favour of one reversioner only—held invalid].

² 1939 P.C. 27; 179 I.C. 615.

of her eldest son who was the *Karta* of the family consisting of her sons (next reversioners at the time) was regarded as operative in favour of them all and was held valid and operative as a relinquishment in favour of the next reversioners. Different portions of the estate may be surrendered or relinquished on different occasions in favour of those who are next reversioners at the time of the transactions respectively.

The limited owner's motive for the surrender is immaterial. If the surrender is otherwise valid, it cannot be called in question on the ground of improper motive.³

3. *Surrender in favour of female reversioner*.—A surrender may be made even in favour of a female if she happens to be the nearest reversioner.¹ Beyond accelerating her succession, it will not confer on her any larger estate than what she would have succeeded to in the property had she survived the limited owner.² She takes a full estate in it if she would have inherited it as Stridhana.

A property surrendered by a widow to the next reversioner namely her daughter who takes only a limited estate in it cannot on the death of the daughter revert to the widow. On the death of the daughter the next reversioner to the estate will succeed to it.³ She can however re-inherit the property as heir to a different person or as heir to the person to whom she has surrendered.⁴ Thus where a daughter in possession of her father's estate surrenders it to her son,

Note 2.

³ *Chellasubbiah v. Pulari*, 31 Mad. 446; *Subbalakshmi v. Narayana Iyer*, 1934 Mad. 535 : 58 Mad. 150.

Note 3.

¹ *Sitanna v. Viranna*, 1934 P.C. 105 : 57 Mad. 749.

² *Bepin Behari v. Durga Charn*, 35 Cal. 1086 [limited estate]; *Rup Ram v. Rewati*, 32 All. 502 [do.]; *Naru v. Tai*, 47 Bom. 431 [full estate]; *Subramanya v. Nanjappa*, 15 Mysore 99 [one daughter renouncing in favour of another daughter].

³ *Sartaji v. Ramdas*, 1924 All. 166 : 46 All. 59.

⁴ *Radharani v. Brindarani*, 1939 P.C. 27 : 179 I.C. 615.

the next reversioner, she can inherit the property on the death of her son as his mother.

4. *Surrender contemplating some benefit to the limited owner.*—The section lays down that a surrender or relinquishment is not invalid merely because it provides for or contemplates some benefit to the female owner in addition to maintenance or any other return or consideration. Hence when surrendering her estate or a portion thereof to the next reversioner she may enter into any fair arrangement with him with respect to the estate. Thus some properties may be set apart for her maintenance for life or may be transferred to her absolutely or the next reversioner may agree to convey any portion of the estate to a nominee or nominees of the female. Where the transaction is a *bona fide* one, it cannot be challenged as a device to divide the estate. She can even sell the estate to the next reversioner for a consideration which will operate as a valid surrender. A compromise of family disputes by an arrangement under which she surrenders the whole or part of her woman's estate and receives any other benefit in return is a valid arrangement and cannot be questioned as a device to divide the estate.¹

5. *Surrender invalid for other reasons.*—All that the section states is that a surrender cannot be impeached merely because it is only of a part of the estate or because she contracts for something in return for the surrender. Hence a surrender may be impeached as invalid and ineffective for other reasons if any. For instance it may be impeached on the ground of fraud, coercion, misrepresentation or undue influence or want of *bona fides*, etc., which make any other transaction invalid. It may also be impeached on the ground that it is in favour of some only of the nearest reversioners at the time.¹

Note 4.

¹ See also *Sureswar v. Mahesrani*, 1921 P.C. 107 : 48 Cal. 100.

Note 5.

¹ See *Nadig Bheema Rao v. Guru Rao*, 6 Mys. L.J. 537.

6. *Surrender following prior alienations.*—According to the proviso to the section a surrender or relinquishment shall not affect any alienation of property made by her prior thereto. Where she has alienated a portion of the estate for a necessary purpose, she can surrender her remaining interest in the estate to the next reversioner.¹ The prior alienation being for a necessary purpose, the next reversioner is also bound by it. Where the limited owner has alienated the estate for a purpose not binding on the reversioners and then surrendered her estate to the next reversioners, the surrender is no doubt valid but the reversioner cannot at once sue the alienee for possession of the estate so alienated. He must wait for it until the death of the female limited owner, because, though the alienation is not binding on him, the alienee is entitled to possession during her lifetime and her act of surrender does not affect prior alienations by her.²

7. *Surrender followed by adoption.*—A surrender by a Hindu widow of her husband's estate, which is otherwise valid according to the provisions of this section, cannot be defeated by a subsequent adoption by her of a son to her husband. The surrender accelerates the succession of the next reversioners at the time and vests an absolute estate in them and the son subsequently adopted cannot question it,¹ for an adopted son's rights in the adoptive father's property does not relate back to any point of time before its own date.² It is otherwise if the surrender itself is invalid for any reason.³ See also Sec. 9 Note 24 above.

Note 6.

¹ *Ramayya v. Bapenamma*, 1937 Mad. 146 : (1937) Mad. 248.

² *Subbamma v. Subramanyam*, 39 Mad. 1035 : 32 I.C. 813.

Note 7.

¹ See also *Yeshvanta v. Antu*, 1934 Bom. 351 : 58 Bom. 521.

² *Shankaramma v. Krishna Rao*, 43 Mysore 415 : 16 Mys. L.J. 376, 390

³ See *Sakharam v. Thama*, 1927 Bom. 26 : 51 Bom. 1019.

Section 20

Investments.—All unappropriated income of any property in which a female has only a limited estate, and all purchases and investments made by her out of the income of such property, unless clearly intended to be an accretion to such property, shall be deemed to be her Stridhana.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Income from Stridhana ; (3) Clear expression of intention ; (4) Enlargement of the estate in other ways.

1. *Scope of the section.*—The income and savings from income of property in which a female has a woman's estate is her Stridhana according to Sec. 10 (2) (e), and she has absolute and unrestricted powers of enjoyment and disposition over it. According to this section any such income or investment of income which is left unappropriated shall be deemed to be her Stridhana and not an accretion to the corpus. No unappropriated income or investment out of income can be treated as an accretion to the corpus unless she clearly intended it to be so.

2. *Income from Stridhana.*—This section deals only with the income from the woman's estate owned by a female and not with income arising from her Stridhana. No question of appropriation arises in the case of income from Stridhana as in the case of income from her woman's estate because in the former case she is the absolute owner of the corpus also.

3. *Clear expression of intention.*—Where there is nothing to indicate her intention regarding the appropriation of the income one way or the other, the section states that the income and investments out of such income shall be deemed to be her Stridhana. They will be treated as accretions to the corpus only if she has clearly expressed her intention to that effect by her conduct or other acts in relation thereto.¹

Note 3.

¹ See also *Soudamini Dasi v. Administrator-General of Bengal*, 20 Cal. 433.

Where the income forms an accretion to the corpus, it passes along with the corpus to the next heir of the last male owner at her death. Thus where she erects buildings out of the income on land which forms part of the corpus,² or deposits money belonging to her husband's estate in a Bank with instructions that the interest as and when it accrues should be added on to the principal,³ or purchases out of the income other lands in the same place and long after the purchase makes a gift of the original estate as well as the after purchases to one and the same person,⁴ it was held that her intention to treat the income and the investments out of the income as accretions to the corpus was clear.

Where the female limited owner purchases lands out of the income in the name of another⁵ and makes a gift of the land so purchased,⁶ or invests the income by advancing it on a mortgage in her own name and subsequently assigns it for value,⁷ her conduct is consistent only with the intention to treat the income as her Stridhana.

4. *Enlargement of the estate in other ways.*—The estate inherited by her may be enlarged in other ways than by the income being added on to the corpus. It may be enlarged by action of the Government,¹ by compromise with a superior owner² or otherwise.³ In such cases the

Note 3.

² *Venkata v. Surenani*, 31 Mad. 321.

³ *Narayanan v. Subbiah*, 1920 Mad. 983 : 43 Mad. 629.

⁴ *Isri Dutt v. Hansbutti*, 10 Cal. 324 P.C. ; *Sheo Lochun v. Sahebsingh*, 14 Cal. 387 P.C. ; *Kulachandra v. Bamasundari*, 41 Cal. 870 : 22 I.C. 701.

⁵ *Narayanappa v. Sitaramiah*, 26 Mysore 147 ; *Nirmala v. Devanarayan*, 1927 Cal. 868 : 55 Cal. 269.

⁶ *Keshav v. Maruthi*, 1922 Bom. 144 : 46 Bom. 37.

⁷ *Akhanna v. Venkayya*, 25 Mad. 351.

Note 4.

¹ *Vangala v. Vangala*, 28 Mad. 13 ; *Kashi Prasad v. Indu Kanwar*, 30 All. 490 ; see also *Venkata v. Veerabhadrayya*, 1922 P.C. 96 : 44 Mad. 643.

² *Ram Shankar v. Lal Bahadur*, 1926 Oudh 277 : 92 I.C. 637.

³ *Isri Dutt v. Hansbutti*, 10 Cal. 334 P.C. ; *Nabakishore v. Upendra Kishore*, 1923 Cal. 563.

enlargement is no more than an accretion to the corpus of the estate independent of her intentions in regard thereto.

Section 21

Succession on termination of limited estate.—On the termination of the limited estate of a female owner, the property comprised in such estate shall pass to the person who at the time is the next heir of the last full owner.

SYNOPSIS

Note :—(1) Termination of the limited estate; (2) Next heir 'at the time'.

1. *Termination of the limited estate.*—The limited estate (woman's estate) of a female owner terminates

(1) on her death,

(2) when the next reversioners release their entire interest in such estate in her favour, according to Sec. 16, or

(3) when she surrenders or relinquishes a part or whole of her woman's estate to the next reversioners, to that extent, according to Sec. 19.

In the case of limited estates other than what is known as the woman's estate the application of this section leads to an absurd result. Such a limited estate devolves according to the terms of the instrument under which it comes into existence and will not pass by succession to the next heir of the last full owner. The wording of this section clearly supports the view that the words 'limited estate' used in Part IV of this Act means only the 'woman's estate' in property inherited by a female and not other limited estates. See also Note 3 to Sec. 16 above.

In case (1) above, the property passes to the next heir of the last full owner at her death.

In case (2) above, the female herself acquires a full estate in the property when she obtains the release in her favour and becomes herself a fresh stock of descent. The property will cease to be the last male owner's for all

purposes including that of inheritance, and hence will not pass to his next heir at the time.

In case (3) above, when she surrenders only a part of her woman's estate, that part passes to the next reversioners at the time of surrender. The rest of her woman's estate passes to the person who at the time of her death is the next heir of the last male owner. He may or may not be the same person to whom the part of the estate was surrendered before.

2. *Next heir 'at the time'.*—This section seems to have been introduced to make it clear that the next heir according to the provisions of this Act is to succeed when there has been a limited estate intervening between the death of the last full owner and the time in question. Thus in *Cicknarasappa v. Govindappa*,¹ the last male owner died before this Act came into force leaving his widow and a posthumous daughter (who also predeceased the widow). When the widow died this Act had come into force. It was therefore held that the property comprised in her woman's estate would go to the person who at the time was the next heir of the last male owner according to the provisions of this Act.

Note 2.

¹ 20 Mys. L.J. 377, 383.

CHAPTER XIII
PART V
MAINTENANCE

Section 22

Females entitled to maintenance.—(1) In addition to any others legally entitled to maintenance, a Hindu male, provided he is possessed of sufficient means, shall be bound to maintain the following female relatives, namely :—

(a) his step-mother ; and

(b) his unmarried full sister until she attains majority.

(2) Every person, male or female, who inherits the property of a Hindu male shall, to the extent of the property inherited, be bound to maintain the female relatives entitled to maintenance from such Hindu.

(3) The manager of a joint Hindu family shall, to the extent of the property of the joint family in his possession or control, be bound to maintain the female relatives of every member thereof entitled to maintenance from such member :

Provisos.—Provided that no female relative who is entitled to a share under Section 8 and who has obtained such share shall be entitled to claim maintenance.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Personal obligation to maintain ; (3) Sub Sec. (2) : Obligation dependent on possession of inherited property ; (4) Sub Sec. (3) : Liability of manager of coparcenary ; (5) Parents ; (6) Sons ; (7) Daughters ; (8) Sister ; (9) Step-mother ; (10) Disqualified heirs ; (11) Female members in a joint Hindu family ; (12) Illegitimate children ; (13) Concubine—Avaruddha Stree ; (14) Wife's right of maintenance ; (15) Widow's right of maintenance ; (16) Widow's right of residence in family house ; (17) Arrears of maintenance ; (18) Proviso : Maintenance of female entitled to a share.

1. *Scope of the section.*—This section states in general terms the nature and extent of the right of maintenance. Sub. Sec. (1) states that a step-mother and an unmarried full sister until she attains majority are also entitled to be

maintained by a person provided he is possessed of sufficient means, in addition to others he is legally liable to maintain. Sub. Sec. (2) states the extent of an heir's liability to maintain the female relatives of the deceased person out of the property inherited. Sub. Sec. (3) states the extent of the liability of the manager of a joint Hindu family to maintain female relatives of the coparceners out of the joint family property in his possession or control. The proviso to the section states that no female relative who is entitled to a share under Sec. 8 and who has obtained such share shall be entitled to claim maintenance.

2. *Personal obligation to maintain.*—The Hindu Law places on every man a legal obligation to maintain his aged parents, his virtuous wife and his minor sons and unmarried daughters.¹ This obligation to maintain arises from the mere relationship between the parties and independently of the possession of any property by him.² The peculiar relationship that exists between parents and children does not exist between grandparents and grandchildren and hence a Hindu is under no personal obligation to maintain his grandparents.³ Nor is he under any personal obligation to maintain his sister or his step-mother or daughter-in-law or sister-in-law.⁴

3. *Sub Sec. (2) : Obligation dependent on possession of inherited property.*—A person male or female who inherits property from another is bound to maintain the female relatives whom the late proprietor was bound to maintain legally or morally; in other words the person inherits the property subject to the obligation to provide for

Note 2.

¹ *Nagendrasa v. Ramakrishnasa*, 46 Mysore 503 : 19 Mys. L.J. 277, 285.

² *Savitribai v. Lakshmibai*, (1878) 2 Bom. 573, 597 F.B. ; *Lala Maheswari v. Mst. Sahdei*, 1937 Oudh 216 : 165 I.C. 227.

³ 46 Mysore 503 : 19 Mys. L.J. 277.

⁴ *Srinivasa Iyengar v. Ramakka*, 11 Mysore 59 [sister-in-law] ; *Sakamma v. Annapurniah*, 11 Mysore 68 [step-mother].

such maintenance.¹ Thus where a person dies leaving his widow and his mother, his widow is liable to maintain his mother out of property she inherits from him.² A father-in-law is only under a moral obligation to maintain his son's widow if he has got separate property. On his death his heir will be under a legal obligation to maintain her out of his estate.³ Similarly it is held that a father is under a moral obligation to maintain his married daughter who has no other means of support. This moral obligation cannot however be made the basis of a suit.⁴ On his death his heir will be under a legal obligation to maintain her out of his estate and she can enforce this right in a suit. A widowed daughter is entitled to maintenance as against her father's estate in the hands of his heirs provided she is without means and her husband's family is unable to maintain her.⁵

4. *Sub Sec. (3): Liability of manager of coparcenary.*—According to this sub section. the manager is bound to maintain the female relatives of every coparcener entitled to maintenance from such coparcener. The sub section does not say anything about the right to maintenance of coparceners nor is it inconsistent with the rule of Hindu Law that every coparcener is entitled to be maintained out of the joint family property. Hence that rule of Hindu Law cannot be deemed to be affected in any way by this sub section. See also Sec. 2 (2) above.

Note 3.

¹ *Bai Daya v. Natha*, 9 Bom. 279; *Kamini v. Chandra*, 17 Cal. 373; *Savitramma v. Ramachanarabhatt*, 5 Mys. L.R. 215; *Rachiah Setty v. Nanjamma*, 9 Mysore 134; *Krishnarao v. Aravindamma*, 19 Mysore 203.

² *Bai Kanku v. Bai Jadhav*, 8 Bom. 15.

³ 19 Mysore 203; *Rangammal v. Echammal*, 22 Mad. 305; *Jai Nand v. Mst. Paran*, 1929 Oudh 251 F.B.; *Sankaramurthy v. Subbamma*, 1938 Mad. 914; (1939) Mad. 242; *Rajanikanta v. Sajani Sundari*, 1934 P.C. 29; 61 Cal. 221.

⁴ *Ambubaiammal v. Sonibaiammal*, 1940 Mad. 804; 192 I.C. 627 F.B.

⁵ 1940 Mad. 804 F.B.; *Mokhada v. Nandolal*, 28 Cal. 278, 288; *Thimmakka v. Eriah*, 15 Mys. L.R. 115.

On the death of any coparcener, his widow and children are entitled to be maintained by the manager of the coparcenary.¹ In fact the surviving coparceners are under an obligation to maintain them out of the joint family funds.² If thereafter there is a partition and in it no special provision is made for their maintenance, the obligation of the coparceners will continue in spite of the partition.³ Even if after a decree is made to the effect that their maintenance should come out of the joint family properties a partition takes place among the coparceners, the partition does not destroy the force of the decree against the whole joint family property, unless it is modified or some arrangement is made by contract or otherwise providing for such maintenance and validly superseding the decree.⁴

A wife of a coparcener is not entitled in the lifetime of her husband to claim maintenance against the whole joint family property. It is her husband alone that is primarily liable for her maintenance and her claim can be made a charge only upon his share in the joint family properties.⁵

PERSONS ENTITLED TO MAINTENANCE

5. *Parents*.—A son is under a personal obligation to maintain his aged parents. It is a legal obligation. It arises out of the peculiar relationship between the parties,¹ and is not dependent on his possession of property. He

Note 4.

¹ *Manu*, Chap. 9, Sec. 108 ; *Bhagwan Singh v. Mst. Kewal Kuar*, 1927 Lah. 28 ; *Rangamma v. Sanjiviah*, 3 Mys. L.R. 43 ; *Srinivasa Iyengar v. Ramakka*, 11 Mysore 59 ; *Doddananjundappa v. Rudramma*, 20 Mysore 245.

² *Kongallappa v. Puttasubamma*, 32 Mysore 243 : 5 Mys. L.J. 115 ; *Narasamma v. Akkayamma*, 16 Mys. L.J. 406.

³ 16 Mys. L.J. 406 ; *Anantharajiah v. Padmavatamma*, 17 Mysore 95 ; *Doddabasappa v. Mallamma*, 1940 Mad. 458 : (1940) 1 M.L.J. 204.

⁴ 32 Mysore 243 ; *Muddarangasetty v. Venkamma*, 22 Mysore 68 ; *Chikka-muniswamy v. Heranuna*, 42 Mysore 222 : 15 Mys. L.J. 319 ; 16 Mys. L.J. 406.

⁵ *Seetharamiasastry v. Subbamma*, 11 Mys. L.R. 243 ; *Moodlaya v. Kamaka*, 25 Mysore 143.

Note 5.

¹ *Nagendrasa v. Ramakrishnasa*, 46 Mysore 503 : 19 Mys. L.J. 277.

is bound to maintain his mother even if he does not inherit any property from his father.² If he is a member of a joint family his widowed mother is entitled to have a provision made for her maintenance out of the entire family properties.³ He is not under a personal obligation to maintain his step-mother or grandparents. See Note 2 above.

6. *Sons*.—A father is under a personal obligation to maintain his minor sons. He is under no such obligation to maintain his major sons.¹ If the father and his sons are members of a coparcenary and there is coparcenary property, even the adult sons have a right to maintenance out of that property, apart from their other rights in it.²

7. *Daughters*.—A person is under a personal obligation to maintain his minor unmarried daughters. On his death his heir is bound to maintain her out of the property inherited.¹

A married daughter is entitled to be maintained by her husband and after the husband's death out of her husband's estate,² or out of the property of the joint family of which he was a member.³ If she is unable to obtain maintenance out of her husband's family, her father, if he has separate property of his own, is under a moral obligation to maintain her.⁴ On his death, this moral obligation

Note 5.

² *Subbaraya v. Subbakka*, 8 Mad. 236.

³ *Kongallappa v. Puttasubhamma*, 32 Mysore 243 : 5 Mys. L.J. 115.

Note 6.

¹ *Ammakannu v. Appu*, 11 Mad. 91 ; *Bhoopathinath v. Basanthkumaree*, 1936 Cal. 556 : 63 Cal. 1098.

² *Sartaj Kuari v. Deoraj Kuari*, 10 All. 272, 288 P.C. ; *Chanvirgouda v. District Magistrate, Dharwar*, 1927 Bom. 91 : 51 Bom. 120.

Note 7.

¹ *Bai Mangal v. Bai Rukmani*, 23 Bom. 291.

² *Brinda v. Radhika*, 11 Cal. 492.

³ *Jayanti v. Alamelu*, 27 Mad. 45 ; *Sridhar Bhagwanji v. Mst. Sitabai*, 1938 Nag. 198 : (1938) Nag. 289.

⁴ *Thimmakka v. Eriah*, 15 Mys. L.R. 115 ; *Ambubayamma v. Sonibaiamma*, 1940 Mad. 804 : (1940) 2 M.L.J. 298 F.B.

to maintain his widowed indigent daughter becomes a legal obligation on his heirs.⁵

8. *Sister*.—According to Clause 1 (b) of this section a person is bound to maintain his unmarried full sister until she attains majority provided he is possessed of sufficient means. If he has inherited property from his father he is bound to maintain out of it his full sister as well as his half-sister because they were both entitled to be maintained by his father.

Where a portion of the family properties were given over to certain unmarried sisters as a provision for their maintenance and marriage expenses after making ample provision for the discharge of the family debts, it was held that the creditors could not proceed against the properties allotted to the unmarried sisters though family debts take precedence over other obligations.¹

9. *Step-mother*.—A person is not under a personal obligation to maintain his step-mother.¹ According to Clause 1 (a) of this section he is bound to maintain her provided he is possessed of sufficient means. If he has inherited property from his father he is liable as his heir to maintain her out of the property inherited. If she is a member of a joint family, the entire family property including the share of her step-sons is liable for her maintenance claim.²

10. *Disqualified heirs*.—After the Hindu Inheritance (Removal of Disabilities) Act 1938 came into force in Mysore, only a person who is and has been from birth a lunatic or

Note 7.

⁵ 1940 Mad. 804 F.B. ; *Mokhada v. Nundolal*, 28 Cal. 278, 288.

Note 8.

¹ *Kerwick v. Hemavathamma*, 44 Mysore 96 ; 17 Mys. L.J. 116 ; *Mst. Raj Kuar v. Din Dayal*, 1931 Oudh 325.

Note 9.

¹ *Sakamma v. Annapurniah*, 11 Mysore 68.

² *Kongallappa v. Puttasubhamma*, 32 Mysore 243 ; 5 Mys. L.J. 115.

idiot is excluded from inheritance or share at a partition.¹ Such a person and his wife and children are entitled to maintenance out of the property which he would otherwise have inherited or taken on partition.²

Where a decree for maintenance was passed in favour of a wife of a person under disability against his coparceners, it was held that the decree ceased to have any effect when he was restored to his senses and became able to exercise his rights as a member of the joint family.³

11. *Female members in a joint Hindu family.*—The female members in a joint Hindu family are entitled to be maintained by the manager out of the joint family properties. In a suit for maintenance by a female member the claim will ordinarily be made a charge on the entire family properties. But it is open to the Court to charge it only upon a portion of the properties.¹ See also Note 4 above.

Some female members are entitled to a share at a partition between coparceners of the family. Such a female is not entitled to maintenance after she obtains such share as provided by the proviso to this section.

Daughter-in-law.—A person is only under a moral obligation to maintain his widowed daughter-in-law whose husband has left no property. On his death his heir is under a legal obligation to maintain her out of the estate he or she inherits.²

Note 10.

¹ Sec. 2, Act V of 1938. See Appendix II.

² *Mit.*, Chap. II, Sec. 10 ; *Ram Sundar v. Ram Sahye*, 8 Cal. 919.

³ *Kadambi Venkatachar v. Lakshamma*, 13 Mys. L.R. 171.

Note 11.

¹ *Muddarangasetty v. Venkanma*, 22 Mysore 68 ; *Sivarudrappa v. Gangamma*, 41 Mysore 379 ; 14 Mys. L.J. 508 ; *Chikkamuniswamy v. Heramma*, 42 Mysore 222 : 15 Mys. L.J. 319.

² *Krishnarao v. Aravindamma*, 19 Mysore 203 ; *Rangammal v. Echammal*, 22 Mad. 305 ; *Rajanikanta v. Sajani Sundari*, 1934 P.C. 29 : 61 Cal. 221.

12. *Illegitimate children : (i) Illegitimate sons.*—The illegitimate son of a Hindu belonging to one of the three regenerate classes namely Brahmin, Kshatriya or Vaisya, by a Dasi is entitled to maintenance but not to any share of the inheritance.¹ The right to maintenance attaches in the first instance to the separate property of the father,² and in its absence to his joint family property if any.³

The illegitimate son of a Sudra by a Dasi is entitled to a right of inheritance to his father's separate property.⁴ If he leaves no separate property, but dies a member of a joint Hindu family, he is entitled to maintenance out of that property.⁵ His position in this respect is analogous to that of widows and disqualified heirs to whom the law allows maintenance because of their exclusion from inheritance and share on partition.⁵

The illegitimate son of a Hindu by a Hindu woman who is not a Dasi is entitled to maintenance even if he be a result of casual or adulterous intercourse.⁶ After the father's death his estate is liable for the maintenance.⁷ If he has left no separate property he is entitled to maintenance out of the joint family property of which the father was a member.⁸ This right to maintenance is personal to the illegitimate son and is not heritable.⁹

Note 12.

¹ *Mit.*, Chap. I, Sec. 12, verse 3 ; *Roshan Singh v. Balwant Singh*, 22 All. 191 P.C. ; *Muniamma v. Akkayamma*, 45 Mysore 311 : 19 Mys. L.J. 39.

² 22 All. 191 P.C.

³ *Ananthaya v. Vishnu*, 17 Mad. 160 ; *Hiralal v. Meghraj*, (1938) Bom. 779.

⁴ *Mit.*, Chap. I, Sec. 12, verse 2 ; *Jogendro v. Nityanund*, 18 Cal. 151 P.C. ; *Velliappa v. Natarajan*, 1931 P.C. 294 : 55 Mad. 1 ; *Ramjee Rao v. Anandappa*, 29 Mysore 163 : 2 Mys. L.J. 92 ; *Chikkamma v. Nanjunda*, 43 Mysore 105 : 16 Mys. L.J. 184.

⁵ 1931 P.C. 294 : 55 Mad. 1.

⁶ *Muthuswamy v. Venkateswara*, 12 M.I.A. 203, 220 ; *Chamava v. Eriah* 1931 Bom. 492.

⁷ *Kuppa v. Singaravelu*, 8 Mad. 325.

⁸ 12 M.I.A. 203 ; *Choutarya v. Purhalad*, 7 M.I.A. 18 ; *Raja Parichit v. Zalim Singh*, 3 Cal. 214 P.C.

⁹ *Roshan Singh v. Balwant Singh*, 22 All. 191 P.C.

The illegitimate son of a Hindu by a non-Hindu woman is not entitled to maintenance under the Hindu Law. But he may claim maintenance under Sec. 488 Cr.P.C. only during the lifetime of the father.¹⁰

Illegitimate sons of the junior members have no right of maintenance out of the ancestral impartible estate.¹¹

(ii) *Illegitimate daughters*.—The illegitimate daughter is not entitled to maintenance under the Hindu Law.¹² But she may claim it from the putative father under Sec. 488. Cr.P.C. during his lifetime.

The Hindu Law Reforms Committee in Mysore recommended an amendment to the Hindu law giving an unmarried illegitimate daughter a right to maintenance.¹³ But the legislature did not adopt the recommendation.

13. *Concubine—Avaruddha stree*.—A person is not liable for the maintenance of his concubine.¹ He can discard her at any moment and she cannot compel him to keep her or to provide for her maintenance.² But if she was in his exclusive keeping till his death, his estate in the hands of his heirs is liable for her maintenance.³ It is not necessary that she should have resided in the house of the deceased.⁴ Her right to maintenance is conditional on her continued chastity.⁵ She has no right of maintenance

Note 12.

¹⁰ *Sitaram v. Ganpat*, 1923 Bom. 384 : 73 I.C. 412.

¹¹ *Krishna Yachendra v. Rajeswara Rao*, 1942 P.C. 3 : 44 Bom. L.R. 551.

¹² *Shama Rao v. Nagamma*, 14 Mysore 243 [No right against surviving coparceners among higher castes].

¹³ See Clause 24 (1) (d) of Draft Bill, *H. L. R. Committee Report*, 1930, page 221.

Note 13.

¹ *Thakur Ram Prasad v. Chotey Munwar*, 1937 Oudh 29 : 12 Luck. 469.

² *Ramanarasu v. Buchamma*, 23 Mad. 282.

³ *Ramaraja v. Papammal*, 1925 Mad. 230 : 48 Mad. 805.

⁴ *Nagubai v. Monghibai*, 1926 P.C. 73 : 50 Bom. 604.

⁵ *Yeswant Rao v. Kashibai*, 12 Bom. 26.

against the coparcenary property of the family of which the deceased was a member.⁶

14. *Wife's right of maintenance*.—The husband is under a personal obligation to maintain his wife, whether he possesses property or not.¹ Even if he is a member of a joint family her right to maintenance is only against him and hence in a suit by her for maintenance her husband's coparceners are not necessary parties.² The obligation to maintain her being personal to him, she has no claim for maintenance against her husband's property in the hands of a transferee from him.³ Where the husband makes a settlement of his properties on his wife as a provision for her in future, a subsequent creditor of his cannot impeach it as merely nominal.⁴

The claim for maintenance of a wife against her husband is a continuing one and a denial of the claim in a previous suit on some such ground as cruelty, does not bar a suit at a subsequent stage on the same ground. It may be that a suit for maintenance based on alleged cruel treatment during a particular period may fail for want of proof. That does not bar a wife, from claiming separate maintenance on the ground of cruelty at a subsequent period. Nor can the decision in the previous case free the husband for all time to come and permit him to treat his wife cruelly with impunity after the decision in the suit.⁵ As to a wife's right to claim separate maintenance, see Sec. 23.

Note 13.

⁶ *Shama Rao v. Naganamma*, 14 Mysore 243 ; see also *Naganamma v. Bheema Rao*, 9 Mysore 61 [Single suit by concubine and illegitimate children, held not bad].

Note 14.

¹ *Moodlaya v. Kamakka*, 25 Mysore 143 ; *Narbadabai v. Mahadeo*, 5 Bom. 99 ; *Jayanti v. Alamelu*, 27 Mad. 45.

² *Seetharamasastry v. Subbamma*, 11 Mys. L.R. 243.

³ *Secretary of State v. Ahalyabai*, 1938 Bom. 321 : (1938) Bom. 454.

⁴ *Kanakaratnamma v. Rajappa*, 17 Mys. L.J. 334.

⁵ *Nagamma v. Puttanarasappa*, 44 Mysore 392 : 17 Mys. L.J. 376, 379 ; *Alimunisa v. Shamcharn Roy*, 32 Cal. 749.

Unchastity of wife.—A wife living in adultery forfeits her right to maintenance from her husband.⁶ If however she repents, returns to purity and performs expiatory rites, she becomes entitled to all conjugal and social rights, unless her adultery was with a man of a lower caste, in which case, after expiation, she can claim no more than bare or starving maintenance.⁷

Wife of Disqualified heir.—See Note 10 above.

15. *Widow's right of maintenance.*—The only person who is under a legal obligation to maintain out of his own property the widow of a deceased Hindu is her own son.¹ As regards others, her only right to maintenance is out of her husband's estate,² or out of property of the family in which he was a coparcener at the time of his death.³ Her claim to maintenance is one accruing from time to time according to her want and exigencies and the statute of limitation does not begin to run against her unless maintenance is clearly demanded and refused.⁴

The right of a widow of a coparcener to maintenance is an absolute right due to her membership in the family,

Note 14.

⁶ *Ganigee v. Rangiah*, 3 Mysore 40; *Parvatamma v. Honnegowda*, 3 Mysore 66; *Nagamma v. Chokireddy*, 30 Mysore 200; 3 Mys. L.J. 266; *Kottoramma v. Gourappa*, 33 Mysore 47; 5 Mys. L.J. 263; *Kandaswami v. Murugammal*, 19 Mad. 6.

⁷ 30 Mysore 200; *Mahadeviah v. Nanjamma*, 31 Mysore 151; 4 Mys. L.J. 114; *Parami v. Mahadevi*, 34 Bom. 278, 283.

Note 15.

¹ *Subbarayappa v. Subbakka*, 8 Mad. 236.

² *Brinda v. Radhika*, 11 Cal. 492.

³ *Jayanti v. Alamelu*, 27 Mad. 45; *Sridhar v. Mst. Sitabai*, 1938 Nag. 198; *Subbamma v. Lakshmipathiah*, 8 Mysore 43; *Boosamma v. Nanjamma*, 8 Mysore 127; *Doddananjundappa v. Rudramma*, 20 Mysore 245; *Kongallappa v. Putta-ubbamma*, 32 Mysore 243; *Chikkamuniswamy v. Heeramma*, 42 Mysore 222; 15 Mys. L.J. 319.

⁴ 42 Mysore 222; *Timmaiengar v. Tirumalaiengar*, 6 Mys. L.R. 196; *Kollamma v. Shamanna*, 11 Mys. L.R. 215; *Narayan Rao v. Ramabai*, 3 Bom. 415 P.C.

and even if she has private means of her own she is entitled to some maintenance out of the family estate.⁵ Her right is enforceable against the whole family and not merely against the branch to which her husband belonged and which took by survivorship his undivided share.⁶ Ordinarily the whole family property is charged with the maintenance, but it is open to the Court to charge it upon only a part of the estate.⁷ The fact that a decree charges only some of the family properties with the payment of it does not affect her right to proceed against other properties not so charged unless it is shown that the other family properties were released from liability for it.⁸ A partition of the family pending a suit for maintenance does not affect her right to get a charge on all the family properties as on the date of the suit.⁹ Where a decree creates a charge on the whole estate for her maintenance, a subsequent partition of the family does not destroy the force of the decree against the whole family property unless it is modified or validly superseded.¹⁰ Where she sues for maintenance after partition of the family she is entitled to a decree only against those members who are in possession of her husband's share, such as her son (natural or adopted) and his sons and grandsons.¹¹ A prior decree obtained by her against her husband in his lifetime is no bar to her claiming a right of maintenance and of residence against his heirs after his death.¹²

Note 15.

⁵ *Lingayya v. Kanakamma*, 38 Mad. 153 : 28 I.C. 200 ; *Annapoornamma v. Veeraraghavareddy*, 1940 Mad. 547 : (1940) 1 M.L.J. 608. Contra.—*Ramawati v. Manjhari*, 4 Cal. L.J. 74.

⁶ *Muadarangasetty v. Venkamma*, 20 Mysore 68 ; 20 Mysore 245 ; 32 Mysore 243 : 5 Mys. L.J. 115.

⁷ 42 Mysore 222 ; *Doddabasappa v. Mallamma*, 1940 Mad. 458.

⁸ *Bhagyalakshamma v. Nanjappa*, 29 Mysore 318 : 2 Mys. L.J. 171.

⁹ *Anantarajiah v. Padmavatamma*, 17 Mysore 95.

¹⁰ *Narasamma v. Akkayamma*, 16 Mys. L.J. 406.

¹¹ *Narasimham v. Venkatasubhamma*, 1932 Mad. 351 : 55 Mad. 752.

¹² *Mst. Sham Devi v. Mohanlal*, 1934 Lah. 101 : 15 Lah. 591.

Widow living apart.—A widow does not lose her right of maintenance even though she may have lived apart from her husband in his lifetime without any justifying cause.¹³ After her husband's death she is not bound to reside in his family house and does not forfeit her right to maintenance by going to live elsewhere, so long as it is not for improper or unchaste purposes that she resides separately.¹⁴ But where the family income is too small to permit separate maintenance being awarded to her, the Court may refuse separate maintenance to her and order that she should be maintained in the family house.¹⁵ The burden lies upon the party resisting the claim to separate maintenance to prove that the family income is not enough for the purpose.¹⁶

Unchastity of widow.—An unchaste widow so long as she persists in her unchastity is not entitled even to bare or starvation maintenance because her right to it is conditional upon her leading a life of chastity.¹⁷ Even if her maintenance is secured by a decree or by agreement she will forfeit that right if she subsequently lapses into unchastity.¹⁸ The burden of proving that she has become unchaste is on the party liable to pay maintenance.¹⁹ If she has reformed her ways before the date of her suit and

Note 15.

¹³ *Surampalli v. Surampalli*, 31 Mad. 388.

¹⁴ *Murgesa Mudaliar v. Papathiammal*, 7 Mys. L.R. 344; *Rachiah Setty v. Nanjamma*, 9 Mysore 134; *Akkayamma v. Venkairayappa*, 17 Mysore 215; *Narayan Rao v. Ramabai*, 3 Bom. 415, 421 P.C.; *Ekradeswari v. Homeswar*, 1929 P.C. 128; 116 I.C. 409; *Jamuna Kunwar v. Arjun Singh*, 1940 A.L.J. 750; 1940 O.A. 1070.

¹⁵ *Boosamma v. Nanjamma*, 8 Mysore 127; *Y'ggamma v. Kalyanamma*, 41 Mysore 90; 14 Mys. L.J. 132; *Godavaribai v. Sagunabai*, 22 Bom. 52.

¹⁶ 17 Mysore 215.

¹⁷ *Kotooramma v. Gourappa*, 33 Mysore 47; 5 Mys. L.J. 263.

¹⁸ *Raja Prithi Singh v. Raj Koer*, 12 Beng. L.R. 238, 247 P.C.; *Moniram v. Keri Kolitani*, 5 Cal. 776, 783 P.C.; *Kisanji v. Lukshmi*, 1931 Bom. 286; *Rangaswamappa v. Shivappa*, 1933 Mad. 699; 57 Mad. 280; but see *Bhup-singh v. Lachman*, 26 All. 321, 325.

¹⁹ *Lakshmichand v. Anandi*, 1935 P.C. 180; 59 All. 672.

reverted to a chaste life the Court may award her bare maintenance, that is, food and raiment just sufficient to support her life.²⁰

A charge of unchastity as disentitling a widow to maintenance must be specifically raised in the pleadings.²¹

Remarriage of widow.—All rights and interests which a widow may have in her deceased husband's property by way of maintenance shall upon her remarriage cease and determine as if she had then died.²²

16. *Widow's right of residence in family house.*—A Hindu widow is entitled to reside in the family house in which she lived with her husband.¹ Her deceased husband's brothers in joint occupation of the house are not entitled to prevent her from using the same for all legitimate purposes which an owner is entitled to, for instance, they cannot obstruct her parents to visit her in the family dwelling house.² The nature of the Hindu widow's possession of the house is not an exclusive possession.³ Where a person in his will allotted a specified portion of a house for his widow for residence in her lifetime, it was held that the widow had an exclusive right of residence and not merely a Hindu widow's right of residence.⁴

A widow cannot in some circumstances insist on her right to dwell in the family house.⁵ She cannot set up her right of residence where her husband had mortgaged the house

Note 15.

²⁰ *Mahadeviah v. Nanjamma*, 31 Mysore 151 : 4 Mys. L.J. 114 ; *Satyabhama v. Keshavacharya*, 39 Mad. 658 ; *Bhikubai v. Haribai*, 1925 Bom. 153 : 49 Bom. 459 ; *Ramkumar v. Bhagwanta*, 1934 All. 78 : 56 All. 392.

²¹ *Haji Saboo Sidick v. Ayeshabi*, 27 Bom. 485 P.C.

²² Sec. 6, Act XII of 1938, see Appendix III.

Note 16.

¹ *Bai Devkore v. Sanmukhram*, 13 Bom. 101.

² *Nanjundappa v. Veeranna*, 32 Mysore 152 : 5 Mys. L.J. 193.

³ *Chikkanagamma v. Sivaswamy*, 44 Mysore 473 : 17 Mys. L.J. 481.

⁴ *Annada Prasad v. Ambika Prasad*, 1926 P.C. 96 : 53 Cal. 948

⁵ *Ramiah v. Nynamma*, 1 Mysore 58.

for a binding debt contracted by him.⁶ So also where the surviving coparceners sell the house for a family necessity she is liable to be evicted even though the purchaser had notice of her right.⁷ But her right is not affected if the alienation is not for family necessity.⁸

17. *Arrears of maintenance*.—A widow who is denied maintenance and has left the family residence is also entitled to arrears of maintenance from the date of her leaving her husband's residence.¹ But she can get arrears only for a maximum period of twelve years prior to date of suit.² She would be entitled to arrears though she may not have contracted debts or incurred expenditure for her maintenance but was being maintained by her relations with whom she was living.³ As Nageswara Iyer, J., very reasonably observes, the principle involved seems to be that if a person is unjustly denied what she is legitimately entitled to, she must be compensated for her loss, and the circumstance that a generous relation bears the expenses of her maintenance is by itself not sufficient to disentitle a wife or a widow to arrears of maintenance.⁴

A widow can waive her claim to maintenance or to arrears of maintenance for any period. Where a widow

Note 16.

⁶ *Chowdri Salar Masood v. Vobamma*, 17 Mys. L.R. 177; *Janiat Rai v. Mst. Malan*, 1931 Lah. 361; 13 Lah. 41.

⁷ *Nanjundappa v. Venkatamma*, 6 Mysore 21; *Hanmantha v. Mallamma*, 6 Mysore 68; *Subbamma v. Lakshmipathiah*, 8 Mysore 43; *Ramanandan v. Rangammal*, 12 Mad. 260; *Mst. Champa v. Official Receiver, Karachi*, 1933 Lah. 901; 15 Lah. 9.

⁸ *Venkatammal v. Andvappa*, 6 Mad. 130; *The B.S. Bank v. Khillo*, 1940 Lah. 90; 187 I.C. 385.

Note 17.

¹ *Raja Yarlugadda v. Yarlugadda*, 24 Mad. 147 P.C.; *Ekradeswari v. Homeswar*, 1929 P.C. 128; 116 I.C. 409.

² Art. 128, Lim. Act, see Appendix V; *Sivarudrappa v. Gangamma*, 41 Mysore 379; 14 Mys. L.J. 508.

³ 41 Mysore 379; *Subba Rao v. Nagalakshamma*, 19 Mys. L.J. 233; 1929 P.C. 18; *Raghunath v. Dwarkabai*, 1941 Bom. 357; 43 Bom. L.R. 772.

⁴ 19 Mys. L.J. 233, 246.

left her husband's house and went to her parent's house, it was held that it would not be unreasonable to infer from that that until she made a demand for maintenance there was such an apparent abandonment as would amount to a waiver of her claim for maintenance and that she cannot claim arrears for any period over which the waiver extended.⁵

A widow cannot be granted arrears of maintenance at the same rate as it is found proper to award her future maintenance.⁶

18. *Proviso : Maintenance of female entitled to a share.*—Certain female members of a joint Hindu family who were entitled to maintenance against the joint family property are given a right to claim a share at a partition between coparceners, under Sec. 8 of this Act.¹ Such females have no right to demand a partition but can get a share only if a partition takes place.² So long as the family remains joint they are entitled to maintenance out of the joint family properties according to Sub Sec. (3) of this section. This proviso says that a female relative who is entitled to a share under Sec. 8 and has obtained such share is not thereafter entitled to claim maintenance. Two conditions have to be satisfied before the proviso can apply, namely (1) she must be a female entitled to a share under Sec. 8 and (2) she must have obtained such share. Hence a female who is not entitled to a share under Sec. 8 is free to claim maintenance at any time. To such a female provision will have to be made, at the partition, for her maintenance and residence, before the property is allotted to the sharers.

Note 17.

⁵ *Chikkamuniswamy v. Heramma*, 42 Mysore 222 : 15 Mys. L.J. 319 ; see also *Shobhana;dramma v. Narasimhaswami*, 1934 Mad. 401 : 57 Mad. 1003.

⁶ 41 Mysore 379 : 14 Mys. L.J. 508.

Note 18.

¹ *Kolla Narasimha Setty v. Nanjamma*, 18 Mys. L.J. 461, 470.

² *Venkatapathiah v. Saraswathamma*, 16 Mys. L.J. 273, 277.

Section 23

Wife when entitled to separate maintenance.—A wife is entitled to refuse to live with her husband and to claim separate maintenance, in any of the following cases, namely :—

(a) when he is suffering from any venereal or loathsome disease ;

(b) when he keeps a concubine in his house ;

(c) when he marries a second wife ;

(d) when he habitually treats his wife with such cruelty or harshness as to endanger her health or personal safety, or with such gross neglect as to make her life with him miserable ;

(e) when he renounces the Hindu religion.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Separate residence and maintenance ; (3) Clause (a) ; (4) Clause (b) ; (5) Clause (c) ; (6) Clause (d) ; (7) Clause (e).

1. *Scope of the section.*—This section states in what circumstances a wife is entitled to refuse to live with her husband and to claim separate maintenance. Some of the clauses in this section create a new right in favour of the wife, for instance Clause (c). There is nothing in the wording of this section to indicate that the rights and obligations created therein are intended to be retrospective in effect.¹

2. *Separate residence and maintenance.*—A wife is ordinarily bound to submit herself obediently to her husband's authority and to live under his roof and protection.¹ She is not entitled to separate residence or maintenance unless there are justifiable reasons for living apart from him.²

Note 1.

¹ *Nagamma v. Puttanarasappa*, 44 Mysore 392 : 17 Mys. L.J. 376, 382.

Note 2.

¹ *Sitanath v. Haimabaty*, (1875) 2 W.R. 377.

² *Eramma v. Doddakka*, 8 Mysore 78 ; *Nandesamma v. Doddasiddappa*, 25 Mysore 260 [legal cruelty] ; *Subba Rao v. Nagalakshamma*, 19 Mys. L.J. 233 ; *Shinappayya v. Rajamma*, 45 Mad. 812 [husband's leprosy] ; *Venkata-pathi v. Puttamma*, 1936 Mad. 609 ; *Udesingh v. Mst. Daulat Kuer*, 1935 Lah. 386 : 16 Lah. 892 ; *Appibai v. Khimji*, 1936 Bom. 138 : 60 Bom. 455.

After this Act came into force, she is entitled to refuse to live with her husband and claim separate maintenance in the circumstances mentioned in this section.

3. *Clause (a).*—A wife can refuse to live with her husband if he is suffering from any venereal or loathsome disease.¹ The wording of this clause clearly implies that a disease in the past does not entitle her to refuse to live with him and claim separate maintenance.²

4. *Clause (b).*—When the husband keeps a concubine in his house, the wife is entitled to refuse to live with him and claim separate maintenance.¹ But if he keeps a concubine away from the family house it is doubtful if the wife can claim separate maintenance. If in addition he treats her with gross neglect and makes her life with him miserable she will be entitled undoubtedly to separate maintenance in any event, under *Clause (d)* of this section.

5. *Clause (c).*—Before this Act came into force a wife had no right to claim separate maintenance on the ground that her husband had married a second wife and the husband in his turn could marry any number of wives without incurring any obligation to provide for separate maintenance to the first wife.¹ This clause creates a new right in favour of the wife and the present tense used in it indicates a second marriage after the Act came into force.² When a husband takes a second wife after this Act came into force,² his first wife will be entitled to refuse to live with him and claim separate maintenance.

Note 3.

¹ See also *Shinappayya v. Rajamma*, 1922 Mad. 399 : 45 Mad. 812.

² *Nagamma v. Puttanarasappa*, 17 Mys. L.J. 376, 385.

Note 4.

¹ See also *Dulari v. Dwarkanath*, 32 Cal. 234, 239.

Note 5.

¹ *Veeraswami v. Appaswami*, (1863) 1 Mad. H.C. 375.

² *Nagamma v. Puttanarasappa*, 44 Mysore 392 : 17 Mys. L.J. 376, 381.

The clause speaks of a husband marrying a 'second wife'. The question arises whether the first and second wives are entitled to separate maintenance when he marries a third wife and so on? The question was left open in *Nagamma v. Puttanarasappa*.² It is submitted that the new obligation imposed on the husband is directed against all marriages subsequent to the first and not particularly against his taking the second wife. On his contracting a marriage subsequent to the first he is liable to provide for separate residence and maintenance to any senior wife who demands them.

6. *Clause (d)*.—This clause is a mere restatement of the law that prevailed in this respect. When the husband habitually treats his wife with such cruelty or harshness as to endanger her health or personal safety, in other words, if he is guilty of legal cruelty she is entitled to refuse to live with him and claim separate maintenance.¹ The burden is on her to prove the existence of circumstances which justified her in leaving his protection entitling her to separate maintenance.² She is not bound to prove repeated acts of violence on his part.³

Even where the husband treats his wife with such gross neglect as to make her life with him miserable she is entitled to refuse to live with him and claim separate maintenance. Cruelty on the part of the husband is not necessary to give her the right to separate maintenance if there has been abandonment of the wife who is chaste.⁴ Yagnavalkya says : ' (He who) abandons an obedient, intelligent, son

Note 6.

¹ *Nandesamma v. Dodda Siddappa*, 25 Mysore 260; *Gowramma v. Ramiah Setty*, 31 Mysore 273 : 4 Mys. L.J. 204 [legal cruelty explained]; *Appibai v. Khimji*, 1936 Bom. 138 : 60 Bom. 455.

² *Eramma v. Dodlakka*, 8 Mysore 78.

³ *Ude Singh v. Mst. Daulat Kuar*, 1935 Lah. 386 : 16 Lah. 892.

⁴ *Sitabai v. Ramachandra Rao*, 12 Bom. L.R. 373 : 6 I.C. 525 [original texts considered].

producing, sweet speaking (wife) must be compelled to give (to her) one-third of his wealth for maintenance.' Abandonment is explained by commentators to mean refusal to maintain. Where it was found that the husband was guilty of continued neglect towards his wife and had practically abandoned her, though the allegation of cruelty was not made out it was held that she was entitled to separate maintenance both past and future.⁵ Where the husband is guilty of continued neglect and abandonment of his wife, an offer to take her back made during a suit by her for separate maintenance should be carefully scrutinised to see if it is a *bona fide* offer or a mere attempt or ruse to defeat the claim for maintenance.⁵ It has been held that whenever the wife lives away from her husband for justifiable reasons though not on account of cruelty and abandonment, she is entitled to separate maintenance.⁶

7. *Clause (e) Apostacy*.—Even before this Act came into force apostacy of the husband entitled the wife to claim separate maintenance.¹

This clause speaks of a husband renouncing the Hindu religion. It is therefore doubtful if this clause applies to those renouncing not the Hindu but some other religion. Thus if a Jain wife finds her Jain husband has changed his religion, she would not under this clause strictly interpreted be able to refuse to live with him or claim separate maintenance.²

Note 6.

⁵ *Subba Rao v. Nagalakshamma*, 19 Mys. L.J. 233.

⁶ 19 Mys. L.J. 233 ; 1935 Lah. 386 ; *Venkatapathi v. Puttamma*, 1936 Mad. 609 : 71 M.L.J. 499.

Note 7.

¹ Ramachandra Iyer, J., in *Dasappa v. Chikkanuma*, 17 Mys. L.R. 324 F.B. ; *Mansha v. Jivan*, 6 All. 617.

² *Sanathkumar v. Veerendrakumariah*, 43 Mysore 534 : 16 Mys. L.J. 521, 525.

Section 24

Right to maintenance unconditional.—The legal right of a widow or other female to maintenance shall not be curtailed by any act to which she is not a free and consenting party, and shall not be affected by non-compliance with conditions or directions, if any, imposed or made by her husband or any other person.

SYNOPSIS

Note.—(1) Right to maintenance unconditional.

1. *Right to maintenance unconditional.*—This section is intended to make it clear that in so far as maintenance is a legal right, its accrual and enjoyment by the female should not depend on the whims and fancies of the husband or parent or any other person. The right to maintenance of a female can be curtailed only by an act to which she is a free and consenting party. It cannot also be affected by her non-compliance with any conditions or directions imposed or made by her husband or any other person, unless of course she expresses her free consent to them.

A widow, for instance, is not bound to live with her husband's family in order to claim maintenance, and will not forfeit that right by going to reside elsewhere, so long as it is not for improper or unchaste purposes. Where a Hindu in his will provides for maintenance to be granted to his widow and makes a direction in the will that she must reside in the family house with his relatives, the widow can ignore that direction for a just cause without forfeiting her right to maintenance.¹ Similarly a daughter-in-law does not lose her legal right to maintenance by declining to reside in her father-in-law's house or according to any directions made by him.²

Note 1.

¹ *Jumna Kunwar v. Arjun Singh*, 1940 A.L.J. 750 : 1940 O.A. 1070 ; see also *Tincouri v. Krishna*, 20 Cal. 15 ; *Ekradeswari v. Homeswar*, 1929, P.C. 128 : 116 I.C. 409.

² *Siddessury v. Janardan*, 29 Cal. 557.

An agreement between a female entitled to maintenance and the persons liable therefor in regard to her maintenance will be binding on her only if she is a free and consenting party thereto. Where maintenance is awarded to her by arbitrators, her legal right cannot be affected by her non-compliance with any conditions imposed on her without her free consent.

Section 25

(1) *Amount of maintenance.*—In determining the amount of maintenance to which a female is entitled, regard shall be had :

firstly, to the means of the person, if any, liable to the claim, and, in cases where the claim is limited to the extent of property available, to the value of such property from the point of view of income ;

secondly, to the claims of other persons, if any, entitled to maintenance as against the same person or out of the same property ;

thirdly, to the position in life of the female, and that of her parents if she be unmarried, or of her husband if she be married or is a widow ; and

fourthly, to the reasonable wants of the female.

(2) Regard shall also be had to any independent and assured means of support possessed by the female, provided such means are derived from property of a productive character, or from sources not dependent on the will of a third person.

Illustration.—Jewels, vessels, furniture and apparel, since they are not property of a productive character, are not to be taken into account.

(3) “ *Reasonable wants* ”.—The expression “ reasonable wants ” in this section includes, not only the ordinary expenses of living, such as food, raiment and residence, but also provision for such religious and educational requirements as are incidental to the station in life of the female entitled to maintenance.

(4) *Variations in amount of maintenance.*—The amount of maintenance once fixed shall not be varied to the prejudice of the female concerned, unless such variation is just and necessary owing to a substantial change in any of the circumstances referred to in Sub Sections (1) and (2).

SYNOPSIS

Note.—(1) Scope of the section ; (2) Amount of maintenance ; (3) Sub Sec. (2) : Independent means of support ; (4) Maximum rate of maintenance ; (5) Sub Sec. (4) : Variation in amount of maintenance ; (6) Rate of maintenance—when unalterable ? (7) Procedure to get the rate altered.

1. *Scope of the section.*—Sub Secs. (1) and (2) state what factors should be taken into consideration in fixing the amount of maintenance to be awarded to a female. Regard is to be had to the value of the estate liable, to the claims of other persons if any on it, to the status and position in life of the female and of her husband or parent as the case may be and to the 'reasonable wants' of the female. Sub Sec. (3) defines 'reasonable wants' in a generous way so as to include a provision for religious as well as educational and social requirements as are incidental to the station in life of the female. Sub Sec. (4) states in what circumstances the maintenance once fixed can be varied.

2. *Amount of maintenance.*—The maintenance awarded to a widow should be such an amount as will enable her to live consistently with her position as a widow with as far as possible the same degree of comfort and luxury as she had in her husband's house.¹ In fixing the amount of maintenance for a female, firstly the means of the person liable to the claim, and when the claim is limited to the extent of the property available, the value of the property from the point of view of income, must be taken into account.² Secondly the claims of others if any entitled to maintenance as against the same person or out of the same estate must be taken into consideration. Thirdly the position and status in life of the female and that of her parents if she be unmarried or of her husband

Note 2.

¹ *Rajanikanta v. Sajani Sundari*, 1934 P.C. 29 : 61 Cal. 221.

² *Subramanya Sastry v. Saraswathamma*, 17 Mysore 211 ; *Sridhar v. Mst. Sitabai*, 1938 Nag. 198 : (1938) Nag. 289.

if she be married or is a widow, and lastly the reasonable wants of the female are to be taken into account.³

Deserted wife's maintenance.—The position of a deserted wife being very different from that of a Hindu widow, the principle on which maintenance is allotted to the latter is no guide for the case of the former.⁴

3. *Sub Sec. (2) : Independent means of support.*—Where the female claiming maintenance possesses Stridhana of a productive character or other independent means of support, they must be taken into account in fixing the amount of maintenance.¹ Jewels, vessels, furniture and apparel are not of a productive character and are not to be taken into account.² But where ornaments are of great value, the fact that she may convert them into money may be considered.³ Sources of her income which are dependent on the will of a third person, for instance the generosity of a relative or other friend, should not be taken into consideration,⁴ nor her capacity to make an income from personal exertion.⁵

4. *Maximum rate for maintenance.*—In ordinary circumstances the upward limit of maintenance allowance to be granted to a widow of a coparcener is half the income of what would have been her husband's share in the joint family property if he was alive and had claimed a partition

Note 2.

³ *Narayan Rao v. Ramabai*, 3 Bom. 415 P.C.; *Ekradeswari v. Homeswar*, 1929 P.C. 128 ; 1934 P.C. 29 ; 17 Mysore 211 ; *Chikkamuniswamy v. Heramma*, 42 Mysore 222 : 15 Mys. L.J. 319.

⁴ *Subbamma v. Subbiah*, 18 Mys. L.R. 162.

Note 3.*

¹ *Kaveramma v. Vydia Subrayappa*, 5 Mys. L.R. 244 ; *Anantharajiah v. Chennamma*, 17 Mysore 92.

² 5 Mys. L.R. 244 ; see also Illustration to Sub Sec. (2).

³ *Gurusiddappa v. Parwatawa*, 1937 Bom. 135 : (1937) Bom. 113.

⁴ *Saraswati v. Sheoratan*, 1934 Pat. 99 : 12 Pat. 869.

⁵ *Subbamma v. Subbiah*, 18 Mys. L.R. 162 ; *Jai Ram v. Mst. Shiv Devi*, 1938 Lah. 344 : (1938) Lah. 352.

at the date of her suit.¹ It may not always be proper to grant maintenance at so high a rate because regard is to be had of the various circumstances mentioned in this section.² She cannot be granted arrears at the same rate as that found proper for future maintenance.³

The fact that the widow has property of her own out of which she can maintain herself does not disentitle her from maintenance. It will only affect the quantum of the maintenance to be granted to her out of her deceased husband's family properties.⁴ According to the Madras High Court the right of a widow of a coparcener to maintenance is an absolute right due to her membership in the family and does not depend on any necessity arising from want of other means to support herself.

5. *Sub Sec. (4): Variation in amount of maintenance.*—The amount of maintenance once fixed with reference to a particular state of circumstances cannot be reduced unless there has been a 'substantial change' in any of the circumstances referred to in Sub Secs. (1) and (2). This is so whether the amount has been fixed by a decree of Court or by agreement of parties.¹ But the amount need not be altered with every fluctuation in the income however small. There must be a substantial change in the income² or other circumstances referred to in Sub Secs. (1) and (2). The rate of maintenance may be reduced if the income of the estate

Note 4.

¹ *Chikkamuniswamy v. Heramma*, 42 Mysore 222 : 15 Mys. L.J. 319 ; *Narasamma v. Akkayamma*, 16 Mys. L.J. 406.

² 42 Mysore 222.

³ *Sivarudrappa v. Gangamma*, 41 Mysore 379 : 14 Mys. L.J. 508.

⁴ *Yeggamma v. Kalyanamma*, 41 Mysore 90 : 14 Mys. L.J. 132 ; **Lingayya v. Kanakamma*, 38 Mad. 153 : 28 I.C. 200 ; *Annapornamma v. Veeraraghavarreddy*, 1940 Mad. 547 : (1940) 1 M.L.J. 608. Contra.—*Ramawati v. Manjhari*, 4 Cal. L.J. 74.

Note 5.

¹ *Siddalingappa v. Siddava*, 2 Bom. 624, 630 ; *Thakur Sheo Mangal v. Bodhi Koer*, 1936 Oudh 60 : 11 Luck. 607 : 159 I.C. 356.

² See *Lala Maheswari Prasad v. Mst. Sakdei*, 1937 Oudh 16 : 165 I.C. 227.

has diminished, unless the diminution has been caused by the default or negligence of the person liable for maintenance.³ It is also recognised that the amount may be enhanced if the income of the estate has materially increased or there has been a material increase in the cost of living.⁴

Where the income has decreased during the year for which maintenance is claimed, it will be granted at a lower rate from the date of the changed circumstances in preference to the date on which the plea to that effect is raised.⁵ The altered rate may be made to apply even in respect of arrears or any portion of arrears claimed.⁶

6. *Rate of maintenance when unalterable?*—It is however possible for either party to contract himself or herself out of the right to claim an alteration in the rate of maintenance under any circumstances.¹ A widow or other female can validly enter into an agreement to receive a fixed maintenance and not to claim any increase in future even in case of a change in the circumstances.² There must however be an express agreement between the parties to that effect. Thus an agreement ‘that maintenance is to be paid for life at a particular rate’ cannot be construed as involving a release of the right of any party to claim an alteration under any circumstances.³

7. *Procedure to get the rate altered.*—Where there is a decree fixing a particular rate, the procedure to get the

Note 5.

³ *Nanjamma v. Viswanathiah*, 16 Mys. L.J. 63 ; *Gopika Bai v. Dattatreya*, 24 Bom. 386.

⁴ *Bangaru v. Vijayamachi*, 22 Mad. 175 ; *Veerayya v. Shellamma*, 1939 Mad. 37 : (1939) Mad. 234.

⁵ 16 Mys. L.J. 63.

⁶ 16 Mys. L.J. 63 ; *Ramawati v. Manjkari*, 4 Cal. L.J. 740.

Note 6.

¹ *Subramanya v. Vembammal*, 14 M.L.J. 339.

² *Moheiswara v. Durgamba*, 1924 Mad. 687 : 47 Mad. 308 ; *Purshothamdas v. Bai Rukmani*, 1937 Bom. 358 : (1938) Bom. 1.

³ 14 M.L.J. 339.

rate altered is by way of a suit, unless the decree contains a clause enabling the parties to apply for a modification of its terms, in which case an application may be made for the purpose in execution proceedings.¹ However Varadachariar, J., doubted in a Madras case if such a clause in a decree awarding maintenance reserving liberty to the defendant to apply for revision of the rate of maintenance in execution may not be strictly in accordance with the provisions of the Civil Procedure Code.²

Similar considerations do not prevail where the rate of maintenance is fixed by agreement between the parties. In such a case a suit may be brought to vary the rate fixed by the agreement, owing to altered circumstances,³ or the altered circumstances may be pleaded in defence in a suit by the claimant to enforce the agreement.⁴

Section 26

Maintenance when a charge.—(1) A right to maintenance under Section 22 shall from the moment—

- (a) when such right is decreed by a Court of law,
- (b) when such right is reduced to writing by the parties concerned, such writing being registered under the Mysore Registration Act, 1903, and
- (c) when a claim is definitely made in writing, such writing being registered under the Mysore Registration Act, 1903 ;

be deemed to be a charge upon the whole extent of the property liable to meet the claim under Sub Sec. (2) or Sub Sec. (3) of that section, as the case may be, and shall have priority over all alienations of such property made subsequent

Note 7.

¹ *Sri Rammalsangji v. Kundan Kunwar*, 26 Bom. 707 ; *Nanjamma v. Viswanathiya*, 16 Mys. L.J. 63.

² *Venkatapathi v. Puttamma*, 1936 Mad. 609 : 71 M.L.J. 499.

³ *Lala Maheswari v. Mst. Sahdzi*, 1937 Oudh 16 : 165 I.C. 227 ; *Sidlingappa v. Siddava*, 2 Bom. 624.

⁴ 16 Mys. L.J. 63 ; *Daneta Kuari v. Meghu Tiwari*, 15 All. 382 [subsequent unchastity] ; *Vishnu Shanbog v. Manjamma*, 9 Bom. 108.

thereto other than an alienation made in good faith for legal necessity by the manager of a joint Hindu family.

(2) A wife's right to maintenance under Section 25 shall, from the moment when a claim is definitely made in writing, such writing being registered under the Mysore Registration Act, 1903, be deemed to be a charge upon all property and interest in property possessed by the husband, and shall have priority over all his personal debts, and over all subsequent alienations of such property or interest, other than an alienation for valuable consideration made in good faith for a necessary or reasonable purpose and without intent to defeat the right.

(3) Nothing in this section shall—

(a) preclude the parties concerned by agreement, or a court by decree in a suit to which the person entitled to maintenance is a party, from confining the charge in respect of the right to maintenance to a specific portion of the property liable ; or

(b) preclude any person who has obtained for consideration, and without notice of an intention to defeat the right to maintenance, any property or interest in property liable to the claim, from requiring that the claim shall, in the first instance, be satisfied out of any portion of the said property or interest in property that may not have been alienated to him, so far as such portion will extend, before proceeding against the portion alienated.

SYNOPSIS

Note.—(1) Scope of the section ; (2) Sub Sec. (1) : Maintenance when a charge ? (3) Charge upon all the property liable for the claim ; (4) Sub Sec. (2) : Charge on property for wife's right to maintenance ; (5) Maintenance claim and other binding debts ; (6) Transfer of property pending suit for maintenance ; (7) Maintenance claim and Sec. 39, Transfer of Property Act ; (8) Sub Sec. (3).

1. *Scope of the section.*—It is already seen that the obligation as to maintenance is in some cases personal, in some cases dependent on possession of inherited property and in others on possession of joint family property. In none of these cases is the right to receive maintenance a charge upon the assets of the person personally liable or upon the property in the possession of the heir or the manager. It is only enforceable like any other personal obligation

until it is made a charge upon property.¹ This section states when the right to maintenance can be deemed a charge upon property if any liable to meet the claim. Clause (a) of Sub Sec. (3) leaves it open to the parties concerned by agreement or to a Court by a decree to confine the charge to a specific portion of such property.

Sub Sec. (2) speaks of 'A wife's right to maintenance under Section 25....'. This seems to be an error. The words 'under Section 25' must be substituted by the words 'Under Section 23'. Sub Sec. (2) as it now stands is confusing for two reasons, namely (1) Sec. 25 does not relate to a wife's right to maintenance and (2) Sub Sec. (1) of this section is wide enough to cover the case of a wife's right to maintenance other than separate maintenance. If the above said correction is made Sub Sec. (2) will be justifying its place in the Act. It will then be a specific provision for the case where a wife is entitled to demand separate maintenance from her husband as provided in Sec. 23.²

2. *Sub Sec. (1) : Maintenance when a charge.*—A right to maintenance of a female shall be deemed to be a charge upon the whole extent of the property liable to meet the claim from the moment (1) when such right is decreed by a Court of law, (2) when such right is reduced to writing by the parties concerned, and such writing is registered under the Mysore Registration Act, 1903, and (3) when the claim is definitely made in writing and such writing is registered under the Mysore Registration Act, 1903. Hence if a claim is made in writing which is registered according to law and a suit for the same claim is thereafter decreed also, the charge will come into effect from the earlier of those two moments. But if the right to maintenance is negated

Note 1.

¹ *Ramanandan v. Rangammal*, 12 Mad. 260, 272; *Bharatpur State v. Gopal*, 24 All. 160; *Jayanti v. Alamelu*, 27 Mad. 45, 49; *Sri Behari Lalji v. Bai Rajbai*, 23 Bom. 342.

² See also *H. L. R. Committee Report*, 1930, p. 206.

in the suit, there can be no charge by reason of the claim made by the writing registered earlier.

According to Sub Sec. (2), a wife's right to maintenance under Sec. 23 (not Sec. 25) shall be deemed a charge from the moment when a claim is definitely made in writing, such writing being registered under the law.

This section makes it clear that for maintenance due to a female member only a charge is created from one of the moments mentioned above, and she can have no other hold on the property. She cannot claim to be in possession of the family properties on the ground that she is entitled to a share in it under the Act, nor can she resist a suit for possession of the property by a coparcener of the family on the ground that she has a right to possession of the property until her share is divided off and placed in her possession.¹ She has no doubt a right of residence in the family house which is an entirely different right.

Effect of the charge.—Where the right to maintenance of a female under Sec. 22 becomes a charge upon the property, the right to maintenance will acquire priority over all personal debts of the person liable and over all alienations of property made thereafter except over an alienation made in good faith for legal necessity by the manager of the joint Hindu family.² Alienations of property effected prior to the creation of the charge will have precedence over the charge unless they are tainted with fraud.³

3. *Charge upon all the property liable for the claim.*—The right to maintenance of a Hindu widow is enforceable against the whole extent of the family property and not

Note 2.

¹ *Chikkanagamma v. Sivaswamy*, 44 Mysore 473 : 17 Mys. L.J. 481, 485.

² See also *Kuloda Prasad v. Jogeswar*, 27 Cal. 194 ; *Narnappa v. Venkattamma*, 13 Mysore 160 [Takes priority over debts not so charged] ; *Annadanappa v. Kenchavva*, 46 Mysore 328 : 19 Mys. L.J. 266.

³ *T. Srinivasachar v. Lakshamma*, 6 Mys. L.R. 184 ; *Becha v. Mothina*, 23 All. 86 [Disposal of entire property to defeat claim] ; *Joytara v. Ramhari*, 10 Cal. 638 [do.].

merely against that of the branch to which her husband belonged.¹ But it is open to the parties concerned by agreement or a Court by decree in a suit to which the person entitled to maintenance is a party to confine the charge in respect of the right to maintenance to a specific portion of the property liable.² See also Sec. 22, Note 15 above.

4. *Sub Sec. (2) : Charge on property for wife's right to maintenance.*—Where a wife claims maintenance against her husband and his coparceners, the claim can be made a charge only upon her husband's share or interest in the family properties and not upon the whole extent of the joint family properties, because, it is the husband alone who is bound primarily to maintain her.¹

According to Sub Sec. (2) a wife's right to separate maintenance will be deemed a charge upon all property and interest in property possessed by the husband from the moment when she makes a claim definitely in a writing which is registered according to law. If it is so made, it will have priority over all his personal debts and over all subsequent alienations of such property or interest, other than alienation for valuable consideration made in good faith for a necessary or reasonable purpose and without intent to defeat the right.

5. *Maintenance claim and other binding debts.*—In the administration of a Hindu's estate, binding debts would take precedence over mere claims for maintenance or residence on the part of the female members of the family ; and a mortgage or sale of family property for the satisfaction of ancestral debts binding on the family is not

Note 3.

¹ *Rangamma v. Sanjiviah*, 3 Mys. L.R. 43 ; *Doddananjundappa v. Rudramma*, 20 Mysore 245 ; *Kongallappa v. Puttasubamma*, 32 Mysore 243.

² *Chikkamuniswamy v. Heramma*, 42 Mysore 222 : 15 Mys. L.J. 319 ; see also Sub Sec. (3) (a).

Note 4.

¹ *Seetharam Sastry v. Subbamma*, 11 Mys. L.R. 243 ; *Moodlayya v. Kamakka*, 25 Mysore 143.

affected by any subsequent charge created on that property for the maintenance of the female.¹ Debts contracted by a person take precedence over the maintenance claim of persons entitled to be maintained by him or his property.² Similarly debts contracted by the manager for purposes binding on the joint family are entitled to precedence over maintenance claims on the joint family properties.³ Where maintenance is made a charge on the properties, it takes precedence over a subsequent alienation of the property even if it is to discharge debts binding on the family.⁴ This Act makes a slight change in this respect. According to Sub Sec. (1) even a maintenance claim which has matured into a charge will not have priority over a subsequent alienation of the property if it is made in good faith for legal necessity by the manager of the joint Hindu family. See also Note 4 above.

6. *Transfer of property pending suit for maintenance.*—In a suit for maintenance where a charge is sought to be created on specific immovable property described in the schedule to the plaint, the question of title to the properties so described or to rights or interests therein is directly in dispute and any alienation of any of the scheduled properties during the pendency of the suit is affected by the doctrine of *Lis pendens* and is subject to the final decision in the suit.¹ Though under this section a right

Note 5.

¹ *Annadanappa v. Kenchavva*, 46 Mysore 328, 331 : 19 Mys. L.J. 266.

² *Jayanti v. Alamelu*, 27 Mad. 45 ; *Jamiat Rai v. Mst. Malan*, 1931 Lah. 718 ; *Jawahar Singh v. Parduman Singh*, 1933 Lah. 116 : 14 Lah. 399.

³ *Ramanandan v. Rangammal*, 12 Mad. 260 ; *Mst. Champa v. Official Receiver, Karachi*, 1933 Lah. 901 : 15 Lah. 9 [Debts of joint family business] ; *Subbamma v. Lakshmipathiah*, 8 Mysore 43.

⁴ *Somasundaram v. Unamalai*, 43 Mad. 800 : 59 I.C. 398 ; *Gangabai v. Pagubai*, 1940 Bom. 395.

Note 6.

¹ *Seetharamanujacharyulu v. Venkatasubbamna*, 54 Mad. 132 ; *Devajammanniavar v. D.C., Mysore*, 13 Mys. L.J. 502 ; *Veerabhadriah v. Kasilingappa*, 42 Mysore 587 : 15 Mys. L.J. 482 ; *Annadanappa v. Kenchavva*, 46 Mysore 328 : 19 Mys. L.J. 266 [suit in *forma pauperis*].

to maintenance becomes a charge on the property when the right is decreed in the suit, yet as the creation of the charge is something different from the rights of a party under Sec. 52, Transfer of Property Act, the charge granted by the decree which may come into existence at the date of the decree and not earlier may be made use of as if it existed at the date of the plaint by the principle of *Lis pendens*.² There can thus be no conflict between this section and the charge being given effect to from the date of the suit itself by the application of the doctrine of *Lis pendens*.

The alienation pending the suit will be subject to the charge for maintenance that may be created by the decree, irrespective of the fact that the consideration for the alienation is utilised for paying off debts which would have had precedence over the claim for maintenance.³ A stranger purchaser of schedule property from a party to a suit for maintenance during its pendency cannot be regarded as a creditor whose debt is entitled to preference over the claim for maintenance even where the purchase money is utilised to discharge debts binding on the family, nor can there be any case for subrogation.³ Where a mortgagee of family property purchased it during the progress of a suit for maintenance by a widow of the family, it was held that whatever may be the position of the mortgagee with reference to the mortgage, the sale that he took of the property during the suit was affected by *Lis pendens*, with the result that the maintenance claim was made a charge on the property though the original mortgage was to secure a debt which had priority over the widow's maintenance claim.⁴

7. *Maintenance claim and Sec. 39, Transfer of Property Act*.—In *Annadanappa v. Kenchavva*¹ a suit by a widow

Note 6.

² 42 Mysore 587.

³ *Annadanappa v. Kenchavva*, 46 Mysore 328.

⁴ *Gangabai v. Pagubai*, 1940 Bom. 395 [prior mortgagee-purchaser].

Note 7.

¹ 46 Mysore 328, 334 : 19 Mys. L.J. 266.

against her step-son for maintenance, the step-son sold some suit schedule properties during the pendency of the suit. The Courts below having found that the sales were without consideration and collusive and that the alienees were aware of the widow's claim and the step-son's intention to defeat it, declared that the alienated properties were also liable for her maintenance. In appeal the High Court observed that it was unnecessary for the Courts to go into the questions whether the purchasers had notice of the maintenance claim or there was consideration for the sales, because Sec. 39, Transfer of Property Act, before its amendment or as it now stands does not require a finding on the question whether the sales are actually supported by consideration or are collusive. In the course of the judgment Abdul Ghani, J., observes : ' under the old section (Sec. 39) it was necessary to find that the alienations were intended to defeat the claim of the plaintiff and that the alienees were aware of this. Under the amended section it is not even necessary to show that the alienations were intended to defeat the maintenance claim. It is sufficient if it is shown that the alienee knew of the claim of the plaintiff for maintenance '.

8. *Sub Sec. (3).*—This is a proviso as it were to the section as a whole. Clause (a) says that the parties concerned by agreement or a Court by decree in a suit to which the person entitled to maintenance is a party, are free to limit the operation of the charge in respect of the right to maintenance to a specific portion of the property liable. Clause (b) says that a person who, for consideration and without notice of an intention to defeat the right of maintenance has obtained any property or interest in property liable for the claim, is not precluded from requiring that the claim shall in the first instance be satisfied out of any portion of the said property or interest in property that may not have been alienated to him, so far as such portion will extend, before proceeding against the portion alienated to him.

CHAPTER XIV

RELIGIOUS AND CHARITABLE ENDOWMENTS

SYNOPSIS

Note.—(1) Endowments ; (2) Creation of endowments ; (3) Dedication of property ; (4) Public and private endowments ; (5) Temples, Maths and Debutter property ; (6) The Mysore Religious and Charitable Institutions Act, 1927 ; (7) Alienation of debutter property ; (8) Alienation of office of shebait or mohunt ; (9) Devolution of office of shebait or mohunt ; (10) Removal of shebait and mohunts ; (11) Suit for possession of hereditary office ; (12) Limitation.

1. *Endowments.*—An endowment means any property dedicated for religious or charitable purposes such as the establishment and worship of an idol,¹ feeding Brahmans and the poor,² performance of religious ceremonies like Lakshmi pujah etc.,³ or the establishment of seats of learning and the like.⁴ Dispositions for religious purposes are highly favoured by Hindu Law, and from the Hindu point of view dedication of property by a Hindu to a deity is not only lawful but commendable in a high degree.⁵

Under the Mysore Religious and Charitable Institutions Act, 1927, an endowment for the carrying out of any religious or charitable object is a ' Religious or Charitable Institution '.

2. *Creation of endowments.*—Every Hindu who is of sound mind and a major can create a valid endowment. He may dedicate for religious and charitable objects all

Note 1.

¹ *Bhupathinath v. Ramlal*, 37 Cal. 128 ; *Khushalchand v. Mahadevgiri*, (1875) 12 Bom. H.C. 214 ; *Juggat Mohini v. Sokheermoney*, 14 M.I.A. 289.

² *Dwarkanath v. Burroda*, 4 Cal. 443 ; *Rajendralal v. Raj Koomari*, 34 Cal. 5 ; *Vaidyanatha v. Swaminatha*, 1924 P.C. 221 : 47 Mad. 884.

³ *Profulla v. Jogendranath*, 9 C.W.N. 528 ; *Lakshmishankar v. Vajjnath*, 6 Bom. 24.

⁴ *Fanindra v. Administrator-General of Bengal*, 6 C.W.N. 321 ; *Manorama v. Kalicharn*, 31 Cal. 166.

⁵ 37 Cal. 128, 136, 141.

property which he can validly dispose of by gift or will. No writing is necessary to create an endowment, except where the endowment is created by a will.¹ All that is necessary is that the religious or charitable purposes should be clearly specified and the property intended for the endowment should be set apart for or dedicated to those purposes. A clear and unambiguous expression of intention to create a trust and vesting of the same in properly appointed trustees is enough to constitute dedication.²

Gift to dharam.—It is held by the Privy Council that gift or bequest to *dharam* is void, as the objects which can be considered to be meant by that word are too vague and uncertain for the administration of them to be under the control of a Court.³ Their Lordships of the Privy Council relied upon Wilson's Dictionary where the word *dharam* is defined as law, virtue, legal or moral duty, and observed that the word *dharam* was as vague as the words 'purposes charitable or philanthropic' which, on account of their vagueness, render a trust for those purposes void in the English Law.⁴ It is submitted with respect that a reference to the Hindu Law texts will clearly show that the word Dharma when used in connexion with gifts of property bears a meaning which is precise and perfectly well settled and that consequently a bequest for Dharma means a gift of property to objects which are clearly indicated and ascertainable.⁵ In an illuminating judgment Sir S. Subramanya Iyer, J.,

Note 2.

¹ *Ramalinga v. Shivchidambara*, 42 Mad. 440 : 49 I.C. 742 ; *Gangireddi v. Thammireddy*, 1927 P.C. 80 : 50 Mad. 421 ; *Hemchand v. Peurey Lal*, 1942 P.C. 64.

² *Prem Nath v. Hari Ram*, 1934 Lah. 771 : 16 Lah. 85 ; *Jai Dayal Ramsaran Das*, (1938) Lah. 704.

³ *Runchordas v. Parvatibai*, 23 Bom. 725 P.C.

⁴ 23 Bom. 725 P.C. ; *Morice v. The Bishop of Durham*, (1804) 10 Ves. 522 ; In re. *Macduff*, (1896) 2 ch. 451 ; *Blair v. Duncan*, (1902) A.C. 37.

⁵ *Parthasarathy v. Thiruvengada*, 30 Mad. 340 ; *Bhupathinath v. Ramlal*, 37 Cal. 128, 161 ; see also *Manu Smriti*, Chap. IV, verses 226, 227 ; see the Author's articles on "Bequest for Dharma" in *A. I. R. 1939 Journal*, pp. 30 and 121.

observes that the word Dharma when used in connexion with a disposition of property is 'a term of art explained with precision by the highest authorities'.⁶ See also the undermentioned cases.⁷

The question is still *res integra* in Mysore. It is submitted that if the true significance of the expression Dharma as explained in the authoritative texts of Hindu law is borne in mind, the objects meant by the word Dharma cannot be considered vague or uncertain, however wide in extent they may be.⁸

3. *Dedication of property*.—Where property is dedicated to an idol, the mere execution of a deed is not enough to constitute a valid endowment. It is also necessary that the executant should divest himself of the property that is endowed. His subsequent acts and conduct will show whether he has done so or not. His subsequent dealings with the property may also indicate whether he really intended to create the endowment or the endowment is merely illusory.¹ But the mere fact that the settlor nominates members of his own family as Shebaites of the temple and provides a small portion of the income of the endowed property as their remuneration will not render the dedication unreal.² A heavy onus lies on persons who assert that property belongs to a religious institution. A case of dedication is not made out merely by evidence of neighbourly or considerate conduct towards a religious institution.³

Note 2.

⁶ 30 Mad. 340.

⁷ 37 Cal. 128, 161; *Narain Das v. Brij Lal*, 1933 Lah. 833; 14 Lah. 827.

⁸ See also Professor J. R. Gharpure's translation of *Yajnavalkya Smriti* with *Mitakshara*, *Virmirodlaya*, *Deepakalika*, Note 2 on page 806.

Note 3.

¹ *Konwar Doorganath v. Ramchander*, 2 Cal. 341, 349 P.C.; *Ramdhan v. Prayag*, 43 All. 503; *Bhekdari Singh v. Sri Ramchanderji*, 1931 Pat. 275; 10 Pat. 388; *Hemantha Kumari v. Gauri Shankar*, 1941 P.C. 38; (1941) All. 401.

² *Jadu Nath Singh v. Thakor Sitaramji*, 39 All. 553 P.C.; *Chandi Charn v. Dulal Chandra*, 1926 Cal. 1083; 54 Cal. 30; *Iswari Bhuvaneswari v. Projonath Dey*, 1937 P.C. 185; (1937) 2 Cal. 447.

³ *Gurdwara Penja Sahib v. Md. Nawaz*, 1941 P.C. 56; 195 I.C. 721.

Partial dedication.—A dedication is said to be absolute and complete where the whole property is dedicated to the idol or other religious and charitable purpose, and no beneficial interest in it is given to any other person. In such a case the property is deemed to be held by the idol or the religious and charitable institution as the case may be. Where however by the grant a mere charge or trust is created in favour of the idol, the dedication is said to be partial or qualified. In such a case the property belongs primarily to the settlor and is heritable and alienable in the ordinary way subject only to the trust or charge in favour of the idol.⁴ Whether the will of a Hindu gives the property to an idol subject to a charge in favour of the heir of the testator, or makes a gift to the idol a charge upon the property has to be determined by the construction of the will as a whole and no absolute rule can be set up.⁵ In a partial dedication the fact that the expenditure in respect of the ceremonies to be performed absorbs only a small portion of the income may indicate that the intention was that the heirs should take the property subject to a charge for the performance of the religious ceremonies mentioned.⁶ Partial dedication may take place not only where a mere charge is created in favour of an idol or other religious object but also where the owner retained the property in himself but granted the community or part of the community an easement over it for certain specified purposes.⁷

4. *Public and private endowments.*—Where the dedication is made for the use or benefit of the public or a section

Note 3.

⁴ *Jatindranath v. Hemantha*, 32 Cal. 129 P.C. ; *Ashutosh v. Durgacharn*, 5 Cal. 438 P.C. ; *Pande Har Narain v. Surja Kunwari*, 1921 P.C. 20 : 43 All. 291 ; *Gopal Lall Sett v. Purna Chandra*, 1922 P.C. 253 : 49 Cal. 459 ; *Parshaddi Lal v. Brijmohan Lal*, 1936 Oudh 52 : 11 Luck. 575 ; 1937 P.C. 185.

⁵ *Tarit Bhushan v. Sridhar*, 1942 Cal. 99 : (1941) 2 Cal. 477.

⁶ 1921 P.C. 20 : 43 All. 291 ; 1936 Oudh 52 : 159 I.C. 117.

⁷ *Hemantha Kumari v. Gauri Shankar*, 1941 P.C. 48 : 193 I.C. 882 [Bathing Ghat at Benares].

of the public, it is a public endowment. But where property is set apart for the worship of a family idol in which the public are not interested, the endowment is a private one.¹ As to the test for determining whether an endowment is a public or a private one, see the undermentioned cases.² In the case of a private endowment all the members of the family acting jointly might give the property another direction, whereas such a thing cannot be done in the case of a public endowment.³ Further if the heirs of the founder are unable to carry on the private endowment for worship of the family idol they may transfer the idol and its property to another family for the purpose of carrying on the worship.⁴ In other respects there is no distinction between the two kinds of endowments. Thus property dedicated to the services of a family idol cannot be alienated except for unavoidable necessity.⁵

Where a temple is established for the worship of persons belonging to a particular sect, though it is a public temple, persons belonging to other sects are not entitled as of right to worship in the temple.⁶

5. *Temples, Maths and Debutter Property*.—The religious foundation known as *Devasthanams* or temples have been established for the spiritual benefit of the Hindu community in general or for that of particular sects or sections thereof. Next to the temples in importance are the *Maths* (or *Mutts*) or monasteries presided over almost invariably by *sanyasis*. The object of these *maths*

Note 4.

¹ *Jugal Kishore v. Lakshmandas*, 23 Bom. 659 ; *Prasad Das v. Jugannath*, 1933 Cal. 519 : 60 Cal. 538.

² *Ram Prasad v. Ram Krishna*, 1932 Pat. 177 : 11 Pat. 594 ; *Puraviya v. Poonachi*, 62 I.C. 655 : 40 Mad. L.J. 289 ; *Parmanand v. Nihal Chand*, 1938 P.C. 195 : 175 I.C. 459 ; *Kelu v. Sivarama Pattar*, 1928 Mad. 879, 884.

³ *Konwar Doorganath v. Ram Chunder*, 2 Cal. 341, 347 P.C. ; *Chandi Charn v. Dulal Chandra*, 1926 Cal. 1083 : 54 Cal. 30.

⁴ *Khetter Chunder v. Hari Das*, 17 Cal. 557.

⁵ *Rupa v. Krishnaji*, 9 Bom. 169.

⁶ *Shankarlinga v. Rajeswara*, 31 Mad. 236 P.C.

is generally the promotion of religious knowledge and the imparting of spiritual instruction to the disciples and followers of the *math*. In the case of the *maths* though there are idols connected therewith, the worship of them is a secondary matter. Temples and *maths* are thus supplementary to each other, both conducive to spiritual welfare, the one by affording opportunities for prayer and worship, the other by facilitating spiritual instruction and the acquisition of religious knowledge. In the case of temples, the ideal person is the idol itself; in the case of *maths* the ideal person is the office of the spiritual teacher, *Acharya*, which, as it were, is incarnate in the person of each *Swami* or head of the *math*.¹

Property dedicated to religious uses is called debutter property. 'Debutter' means literally 'belonging to the deity'.

Management of endowed property.—Idols and *maths* are both juridical persons capable of acquiring holding and vindicating legal rights, though in the nature of things they can only act in relation to those rights through the medium of some human agency.² The management of the property held by an idol vests in a person known as *Shebait* or manager. The *shebait* is by virtue of his office the administrator of the property attached to the temple and is in the position of a trustee.³ A *shebait* being a manager only, ceases to be a *shebait* when he ceases to manage the property and

Note 5.

¹ *Vidyapurna v. Vidyanidhi*, 27 Mad. 435 ; *Giyana v. Kandaswami*, 10 Mad. 375, 389.

² *Manohar v. Lakshmiram*, 12 Bom. 247 ; *Chotalal v. Manohar*, 24 Bom. 50 P.C. ; *Prosonno Kumari v. Golabchand*, 14 Beng. L.R. 450, 459 P.C. ; *Narasimham v. Venkatalingam*, 1927 Mad. 636 : 50 Mad. 687 ; *Pramathanath v. Pradyumna*, 1925 P.C. 139 : 52 Cal. 809.

³ 1925 P.C. 139 ; *Ramanathan v. Murugappa*, 29 Mad. 283 P.C. ; *Shibes-souree v. Mothuranath*, 13 M.I.A. 270, 273 ; *Tarit Bhusan v. Sridhar*, 1942 Cal. 99 : (1941) 2 Cal. 477 ; *Rajagopalachar v. The District Muzrai Officer*, 43 Mysore 466 : 16 Mys. L.J. 413 [Even a full blown shebait or Dharmakarta is not a trustee within the meaning of Sec. 10, Lim. Act),

carry on the worship of the idol.⁴ In the case of a *math* the possession and management of the property of the *math* belongs to the head of the *math* called *mahant*. Litigation in respect of it has ordinarily to be conducted by and in the name of the *mahant*.⁵ Property belonging to a religious institution may by the usage and custom of the institution vest in trustees other than the spiritual head.⁶ In any case the property is held solely in trust for the purposes of the institution.⁷ Surplus income must be added on to the endowment and not applied for the personal enjoyment of the head of the *math*.⁸ It has been held that a *mahant* is not a 'trustee' in the English sense of the term,⁹ but is *answerable as a trustee* for his administration.¹⁰

6. *The Mysore Religious and Charitable Institutions Act, 1927*.—This Act consolidates and amends the law relating to Muzrai and other Religious and Charitable Institutions in Mysore. Chapter III of this Act relates to Public, Religious and Charitable institutions other than Muzrai institutions. Sec. 14 enables the Government to undertake either temporarily or permanently, the management of a public religious or charitable institution in respect of which a trust is created, in the circumstances mentioned in the section. Secs. 17 and 18 enable the Muzrai Officer to institute an enquiry regarding any alleged mismanagement of the property of a religious or charitable institution and with the previous sanction of the Government to pass necessary orders as the case may require. Sec. 19 provides

Note 5.

⁴ *Bhuban Mohan v. Narendranath*, 1932 Cal. 27 : 135 I.C. 865.

⁵ *Babaji Rao v. Lakshman Das*, 28 Bom. 215, 223 ; *Jodhi Rao v. Basdeo Prasad*, 33 All. 735 F.B. ; *Jagadindranath v. Hemantha*, 32 Cal. 129 P.C. ; *Govind v. Mohanta Ramcharan*, 63 Cal. 326.

⁶ *Arunachallam v. Venkutatchalapathi*, 53 I.C. 288 : 43 Mad. 253 P.C.

⁷ 63 Cal. 326.

⁸ 43 Mad. 253 P.C. ; *Sethuramaswamy Iyer v. Meruswamiar*, 43 I.C. 806 : 41 Mad. 296 P.C. ; *Ram Prakash v. Anand Das*, 43 Cal. 707 P.C.

⁹ 43 Mad. 253 P.C. ; *Ananthakrishna Sastri v. Prayag Das*, (1937) 1 Cal. 84.

¹⁰ *Nelliappa Achari v. Punnaivanam Achari*, 1927 Mad. 614 : 50 Mad. 567.

for a summary remedy in case of wrongful alienation of property belonging to a religious or charitable institution.

Chapter IV of the Act relates to *Maths* and other institutions of a similar nature. Sec. 24 provides that Chapters II and III of the Act shall not apply to *Maths* and other institutions of a similar nature. According to Sec. 25, the Government may take over possession and management of the property of any *Matha* or other institution of a similar nature in the circumstances mentioned in the section. When any *Matha* has come under the management of the Government under the provisions of this chapter, the Government is competent to exercise all the powers possessed by the *Mathadhipathi*, as provided in Sec. 28. Where any inam land is granted by the Government for the upkeep of any *Matha*, any alienation of such land made without the previous sanction of the Government shall be null and void, according to Sec. 30.

Sec. 40 A in Chapter VI of the Act provides that any order passed under this Act or the rules issued thereunder by a Muzrai Officer or by the Government shall not bar a suit under the provisions of Sec. 92 of the Code of Civil Procedure, 1911.

7. *Alienation of debutter property*.—As a general rule property dedicated for the purposes of a religious or charitable institution as for instance, a temple or a mutt, is inalienable. However the person entrusted with the possession and management of the property, namely the shebait or mahant is of necessity empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir. ‘If this were not so the estate of the idol might be destroyed or wasted, and its worship discontinued, for want of the necessary funds to preserve and maintain them’.¹ A shebait or mohant can

Note 7.

¹ *Prosonno Kumari v. Golabchand*, (1875) 14 Beng. L.R. 450, 459 P.C.; *Pasupathinath v. Pradyumna Kumar*, 63 Cal. 454.

alienate debutter property only 'in a case of need or for the benefit of the estate'.² Apart from any question of necessity, a mohant has power to create an interest (*e.g.*, a lease) in property appertaining to the *math* which will continue during his own life, that is, until he ceases to be the mohant by death or otherwise.³ Where a shebait had granted a permanent lease, their Lordships of the Privy Council observed that the lease though void as a permanent lease in excess of the powers of the shebait and a breach of trust, was however valid for the lifetime of the grantor.⁴ What applies to the case of a permanent lease applies also to the case of a sale.⁵ It is held that an alienation of property for constructing pakka buildings for the accommodation of visitors to the *math* is for legal necessity.⁶

Burden of proof of necessity.—Where an alienation of debutter property is impeached, the burden lies on the alienee to prove either that there was legal necessity in fact or that he made proper and *bona fide* inquiries as to the existence of such necessity and did all that was reasonable to satisfy himself as to the existence of such necessity. The rules as to burden of proof in the case of an alienation by a shebait or mohunt are the same as those which apply to the case of an alienation by the manager for an infant heir.⁷

8. *Alienation of office of shebait or mohunt.*—The office of shebait or mohunt is *res extra commercium* and hence a sale of such office whether in execution of a decree or in

Note 7.

² *Hanuman Persaud v. Mst. Babooze*, (1856) 6 M.I.A. 393; *Abhiram v. Shyama Charn*, 36 Cal. 1003 P.C.; *Palaniappa v. Devasikhamony*, 39 I.C. 722 : 40 Mad. 709 P.C.; *Vidya Varuthi v. Baluswami Iyer*, 1922 P.C. 123 : 44 Mad. 831; *Daivasikhamony v. Periyanan Chetti*, 1936 P.C. 183 : 59 Mad. 909.

³ *Ramcharn Das v. Nauranji Lal*, 1933 P.C. 75 : 12 Pat. 251.

⁴ 1922 P.C. 123 : 44 Mad. 831.

⁵ *Subbaiya v. Md. Mustapha*, 1923 P.C. 175.

⁶ *Niladri Sahu v. Chaturbuj Das*, 1926 P.C. 112 : 98 I.C. 576; *Vibudhapriya v. Lakshmindra*, 1927 P.C. 131 : 50 Mad. 497 [rebuilding of dining hall for visitors].

⁷ *Konwar Doorganath v. Ramchander*, 2 Cal. 341, 351 P.C.; *Murugesan v. Manikavasaka*, 39 I.C. 659 : 40 Mad. 402 P.C.

private is void even if the transfer is made coupled with an obligation to manage the property in conformity with the trust attached thereto.¹ Even if a custom is proved which sanctions the sale of such an office for the pecuniary advantage of the trustee, the court will refuse to recognise it as being against public policy.²

But there is no absolute prohibition against the gift of such an office. The office can be transferred to a person in the line of succession by renunciation, gift or will.³ But if the gift or will is in favour of a stranger or a remoter relation in preference to nearer relations, the transfer is void and cannot be upheld unless it is sanctioned by custom and is to the benefit of the institution.⁴

9. *Devolution of office of shebait or mohunt.*—In the case of a *math* the succession to the office of mohunt is governed by the usage of each particular *math* and the rule of practice of the institution should be collected from its own constitution or practice as proved in evidence. Generally the mohunt nominates his successor by appointment during his lifetime or by will. In some cases the succession depends upon election by the disciples and followers of the *math*.¹ Where the appointment is not made *bona fide* in the interests of the *math*, but in furtherance of the interests of the appointor the appointment is invalid.²

Note 8.

¹ *Rajahvurmah v. Ravi Vurmah*, 1 Mad. 235 P.C. ; *Gnanasambandha v. Velu*, 23 Mad. 271 P.C. ; *Durga v. Chanchal*, 4 All. 81 ; *Govinda v. Ramcharn*, (1936) 63 Cal. 326.

² 1 Mad. 235 P.C.

³ *Mancharasu v. Pranshankar*, 6 Bom. 298, 300.

⁴ *Rajaram v. Ganesh*, 23 Bom. 131 ; *Sabitri v. Savi*, 1933 Pat. 306 : 145 I.C. 1 : 12 Pat. 359 [Relinquishment in favour of next incumbent].

Note 9.

¹ *Grzedharee Doss v. Nandkishore*, (1865) 11 M.I.A. 405, 428 ; *Genda Puri v. Chatar Puri*, 9 All. 1 P.C. ; *Ram Prakash Das v. Anand Das*, 43 Cal. 707 P.C. ; *Lahar Puri v. Puran Nath*, 37 All. 298 P.C. ; *Gurdwara Penja Sahib v. Md. Nawaz*, 1941 P.C. 56 : 195 I.C. 721.

² *Ramalingam v. Vaithilingam*, 16 Mad. 490 P.C. ; *Nataraja v. Kailasami*, 1921 P.C. 84 : 44 Mad. 283.

In the case of a temple, succession to the office of a shebait is governed by the terms of the grant by which it is created, and in the absence of such a provision, by the custom or usage of the institution. Otherwise it passes to the founder's heirs.³ Where the office devolves on more persons than one, they may arrange for the execution of the functions of the office jointly or by terms, or if a right to receive offerings is attached to the office, they may sue for partition and have their respective periods of service fixed by the Court.⁴

Females are not disqualified simply by reason of their sex, from being the managers of religious endowments, but they cannot perform any spiritual functions.⁵ According to the practice and precedents obtaining in the Madras Presidency, a Hindu female is not incompetent by reason of her sex to succeed to the office of Acharya in a temple and to the emoluments attached thereto.⁶

10. *Removal of shebait and mohunts.*—Courts have jurisdiction over the management of public endowments, to supervise and control the managers or to frame schemes for their management. If it is necessary for the good of a religious endowment, it can remove the shebait or mohunt from their position as managers. A shebait can be removed from his office if he has placed himself in a position in which the Court thinks he can no longer faithfully discharge the obligations of his office.¹ Mere laxity of management on

Note 9.

³ *Ganesh Chander v. Lal Behary*, 1936 P.C. 318 : 164 I.C. 347 ; *Jagadindra Nath v. Hemantha*, 32 Cal. 129 P.C. ; *Sethuramaswamier v. Meruswamier*, 41 Mad. 296, 305 P.C. ; *Mst. Anuragi Kuer v. Parmanand*, (1939) Pat. 171.

⁴ *Ramanathan v. Murugappa*, 29 Mad. 283 P.C. ; *Pramathanath v. Pradyumna Kumar*, 1925 P.C. 139 : 52 Cal. 809.

⁵ See *Janoki Devi v. Gopal*, 9 Cal. 766 P.C.

⁶ *Annayya v. Ammakka*, 41 Mad. 886 : 47 I.C. 341 F.B.

Note 10.

¹ *Ram Parkash Das v. Anand Das*, 33 I.C. 583 : 43 Cal. 707 P.C. ; *Srinivasa v. Evalappa*, 1922 P.C. 325 : 45 Mad. 565, 583 ; *Peary Mohan v. Monohar*, 1922 P.C. 235 : 48 Cal. 1019.

his part not accompanied by any fraud or dishonest misappropriation is not enough to remove him from the office.² As to when the Court can frame a scheme for the management of a public endowment, see Sec. 92 Civil Procedure Code.

11. *Suit for possession of hereditary office.*—A suit for possession of an hereditary office must be brought according to Art. 124, Limitation Act within 12 years from the date the defendant takes possession of the office adversely to the plaintiff.¹ An hereditary office is possessed when profits thereof are usually received or (if there are no profits) when the duties thereof are usually performed.²

12. *Limitation.*—For the purposes of Sec. 10, Limitation Act, any property comprised in a Hindu religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of any such property shall be deemed to be the trustee thereof. Hence a suit against a shebait or mohunt for endowment property cannot be barred by any length of time.¹

By an amendment to the Mysore Limitation Act in 1938, Articles 48 B, 134 A, 134 B and 134 C were newly added into the First Schedule of the Act. A suit by a person to set aside a transfer of immovable property comprised in a Hindu religious or charitable endowment, made by a manager thereof for a valuable consideration should be brought within 12 years from the time when the transfer becomes known to him.² A suit by a manager of a Hindu

Note 10.

² *Tiruvengadath v. Srinivasa*, 22 Mad. 361; *Chotalal v. Manohar*, 24 Bom. 50 P.C.; *Pravagdas v. Tirumala*, 30 Mad. 138 P.C.; *Nelliappa v. Punnaivanam*, 1927 Mad. 614; 50 Mad. 567.

Note 11.

¹ *Siddayya v. Siddaramiah*, 20 Mys. L.J. 165.

² See explanation to Art. 124, Lim. Act.

Note 12.

¹ See Sec. 10, Lim. Act, as amended by Act XI of 1938.

² Art. 134 A, Lim. Act, see Appendix V.

religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration must be brought within 12 years of the death, resignation or removal of the transferor.³ Where the transfer by the previous manager is by way of a lease and the succeeding mahant fails to sue to set it aside within the time allowed by Art. 134 B, the lease is binding on him also and he can only recover the agreed rent.⁴

Note 12.

³ Art. 134 B, Lim. Act, see Appendix V.

⁴ *Ram Kishore Das v. Ganga Gobinda Pati*, 1937 Cal. 305 : (1937) 2 Cal, 242,

APPENDICES

Some Enactments affecting the Hindu Law

APPENDIX I

ACT X OF 1894

[Passed on the 5th day of October 1894]

An Act to Prevent Infant Marriages in the Territories of Mysore

Preamble.—Whereas it is expedient to prevent infant marriages in the territories of Mysore: His Highness the Maharaja is pleased to enact as follows:—

1. *Short title.*—This Act may be called “The Mysore Infant Marriages Prevention Act.”

(ii) *Extent and commencement.*—It shall extend to the whole of the territories of Mysore, but it shall apply only to marriages among the Hindus. It shall come into operation at the expiration of six months from the date of its publication in the official Gazette.

2. *Definition.*—For the purposes of this Act, an “infant girl” means a girl who has not completed eight years of age.

3. *Punishment for causing or abetting infant marriages.*—Any person who causes the marriage of an infant girl, or who knowingly aids and abets within the meaning of the Indian Penal Code such a marriage, and any man who having completed eighteen years of age marries an infant girl, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

4. *Punishment of a man above fifty years marrying a girl under fourteen.*—Any man who having completed fifty years of age marries a girl who has not completed fourteen years of age, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

5. *Punishment for abetment of offence provided against in Section 4.*—Any person who causes the marriage of a girl who has not completed fourteen years of age, with a man who has completed fifty years of age, and any person who knowingly aids and abets, within the meaning of the Indian Penal Code, such a marriage, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

6. *Offences under the Act by whom triable.*—No offence punishable under this Act shall be tried by any Court inferior to that of a Magistrate of the District.

7. *Validity of marriages not to be affected by reason of the penalties provided.*—No marriage which has actually taken place, shall be deemed to be invalid on the ground of the penalties provided by this Act.

8. *No prosecution to be instituted without the previous sanction of Government.*—No prosecution under this Act shall be instituted without the previous written sanction of the Government accorded after such enquiry as the Government may deem fit to make.

APPENDIX II

ACT V OF 1938

*(Received the Assent of His Highness the Maharaja
on the 3rd day of February 1938)*

An Act to Amend the Hindu Law

Whereas it is expedient to amend the Hindu Law relating to exclusion of certain classes of heirs from inheritance ; It is hereby enacted as follows :—

1. (i) *Short title.*—This Act may be called the Hindu Inheritance (Removal of Disabilities) Act, 1938.

(ii) *Extent.*—It extends to the whole of Mysore.

2. *Persons not to be excluded from inheritance or rights in joint family property.*—Notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by the Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in joint family property by reason only of disease, deformity or physical or mental defect.

3. *Saving and exception.*—Nothing herein contained shall affect any right which has accrued or any liability which has been incurred before the commencement of this Act, or shall be deemed to confer upon any person any right in respect of any religious office or service or of the management of any religious or charitable trust which he would not have had if this Act had not been passed.

APPENDIX III

ACT XII OF 1938

*(Received the Assent of His Highness the Maharaja
on the 7th day of July 1938)*

An Act to Remove all Legal Obstacles to the Marriage of Hindu Widows in the Mysore State

Whereas the removal of all legal obstacles to the marriage of Hindu Widows in the State will tend to the promotion of public welfare and whereas it is just to hold offsprings of such marriages as legitimate ; it is hereby enacted as follows :—

1. *Short title, extent and commencement.*—(i) The Act may be called “ The Mysore Hindu Widows Re-marriage Act, 1938 ”.

(ii) It shall extend to the whole of the territories of Mysore.

(iii) It shall come into operation at the expiration of one month from the date of its publication in the official Gazette.

2. *Marriage of Hindu widows legalised.*—Notwithstanding any custom and any interpretation of Hindu Law to the contrary, no marriage contracted between Hindus shall be invalid, and no issue of such marriage shall be illegitimate, by reason of the woman having been previously^a married or betrothed to another person who was dead at the time of such marriage, provided that the parties must not be related to each other in any degree of consanguinity or affinity which would under Hindu Law render a marriage illegal.

3. *Ceremonies constituting valid marriage to have effect on widows re-marriage.*—Whatever words spoken, ceremonies performed or engagements made on the marriage of a Hindu female who has not been previously married are sufficient to constitute a valid marriage, shall have the same effect if spoken, performed or made on the marriage of a Hindu widow; and no marriage shall be declared invalid on the ground that such words, ceremonies or engagements are inapplicable to the case of a widow.

4. *Consent to re-marriage of minor widow.*—If the widow re-marrying is a minor whose marriage has not been consummated, she shall not re-marry without the consent of her father, or if she has no father, of her paternal grandfather, or if she has no such grandfather, of her mother, or failing all these, of her elder brother or failing also brothers, of her next male relative.

Punishment for abetting marriage made contrary to this section.—All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year or to fine not exceeding five hundred rupees or to both.

Effect of such marriage : proviso.—And all marriages made contrary to the provisions of this section may be declared void by a court of law : Provided that, in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated.

Consent to re-marriage of major widow.—In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid.

5. *Savings of rights of widow marrying.*—Except as hereinafter provided, a widow shall not by reason of her re-marriage forfeit any property or any right to which she would otherwise be entitled; and every widow who has re-married shall have the same rights of inheritance as she would have had had such marriage been her first marriage.

6. *Rights of widow in deceased husband's property to cease on her remarriage.*—All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property with no power of alienating the same, shall upon her re-marriage cease and determine as if she had then died ;

and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

7. *Guardian of children of deceased husband on the re-marriage of his widow.*—On the re-marriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband the guardian of his children, the father or paternal grandfather or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who when appointed shall be entitled to have the care and custody of the said children, or of any of them during their minority, in the place of their mother; and in making such appointment the Court shall be guided, so far as may be, by the laws and the rules in force touching the guardianship of children who have neither father nor mother:

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

APPENDIX IV

ACT XV OF 1938

*(Received the Assent of His Highness the Maharaja
on the 13th day of July 1938)*

An Act for the Removal of Disabilities arising from Change of Religion or Deprivation of Caste

Whereas it is expedient to remove certain disabilities arising from change of religion or deprivation of caste; It is hereby enacted as follows:

1. *Short title, extent and commencement.*—(i) This Act may be called the Act for the removal of religious and caste disabilities.

(ii) It extends to the whole of Mysore.

(iii) It shall come into force at once.

2. *No convert to be divested of vested interest.*—No person and no heir or representative of such person shall, merely by reason of his having renounced or being excluded from any religion or of his being deprived of caste:

(i) be divested of any vested interest to or in property;

(ii) be deprived of any right of inheritance or personal right;

Provided that no person and no heir or representative of such person shall by reason of this enactment be entitled to retain or acquire any

property or right or to exercise any right peculiar or appropriate only to the religion which he has renounced or from which he has been excluded, or peculiar or appropriate only to the caste of which he has been deprived.

ILLUSTRATIONS

(a) *A* is a trustee for an endowment of his religion. Out of that endowment he is entitled to provide for his own residence and maintenance. On being converted to another religion, he will cease to retain his interest in the endowment.

(b) *A*, a Hindu with vested interest in joint family property, is converted to Christianity. He will, on conversion, retain his interest in that property, but without the incidents peculiar or appropriate only to members of a joint Hindu family.

(c) *A*, a Hindu, dies intestate, leaving him surviving a legitimate son *B*, a converted Christian. *B* will succeed *A* as heir, not by survivorship as a Hindu co-parcener.

(d) *A*, a Hindu, dies leaving him surviving a legitimate son *B*, a converted Christian. *A*, before his death, has disposed of his property by a valid will. *A*'s property will follow the dispositions of that will.

(e) *A*, a Mussalman, with four legally married wives, is converted to Christianity. *A*, after his conversion, will not be able to divorce them by ceremonies under the Mahomedan Law.

(f) *A*, a Hindu with Hindu sons, becomes a Mussalman. After conversion, he will not be able to exercise the right of a Hindu father to give one of his Hindu sons in adoption to a Hindu.

(g) *A* Hindu voluntarily renounces the world and becomes a *sanyasi*. He will not be affected by this Act.

3. *Person's right to property not to be affected by another's conversion.*—No person and no heir or representative of such person shall, by reason merely of another person having renounced or being excluded from any religion or being deprived of caste,

(i) be divested or deprived of any property, right of inheritance or personal right which he would have held had such other person remained in that religion or caste ;

(ii) be forced to any act or to suffer any act inconsistent with or not appropriate to his own religion or caste.

Explanation.—The religion or caste of any person shall be presumed to be that in which he was born. A Court shall, till the contrary is shown, presume that it is for the advantage of a minor to remain in the religion or caste in which he was born.

ILLUSTRATIONS

(a) *A* and *B* are Hindu full brothers and *C* their half-brother. *A* becomes a Christian. *B*'s right of inheritance to *A* will not be affected by *C* becoming a Christian.

(b) *A*, a Hindu, having a share and a right to live in the joint family house, becomes a Christian. He cannot contrary to the will of the Hindu

members of the family, enforce his right to live himself in the joint family house.

(c) *A*, a Christian man, has a Christian wife *B*. *A* becomes a Mussalman and marries a second wife by ceremonies under the Mahomedan Law. *A* will remain liable for the maintenance of *B*, and *B* will retain her right to divorce him, if she chooses, according to the law applicable to Christians. But *A* cannot enforce against her any conjugal rights, nor divorce her, except, for reasons and in the manner allowed by the law applicable to Christians.

(d) *A*, a Christian man, with minor Christian children, becomes a Mussalman. He will remain liable for their maintenance. But he cannot enforce against them any right of guardianship inconsistent with their religion, such as circumcising his minor sons or giving his minor daughters in marriage to Mussalmans with ceremonies which subject them to Mahomedan Law.

(e) *A*, son of *B*, a Hindu, becomes a Christian, and is consequently deprived of caste. *B* will have the same right of adoption as he would have had if *A* had become an outcaste or disqualified son while remaining a Hindu; but the adoption, if made, will not operate to deprive *A* of property or rights to which *A* is entitled under Section 2 of this Act.

(f) *A*, son of *B*, a Hindu, becomes a Christian. After the conversion of *A*, another son *C* is born to *B*. *C* will have the same rights in respect of ancestral property as he would have had if *A* had remained a Hindu; but the birth of *C* will not otherwise affect the rights of *A* under Section 2 of this Act.

APPENDIX V

THE MYSORE LIMITATION ACT IV OF 1911

The First Schedule

First Division : Suits

Article	Description of suit	Period of limitation	Time from which period begins to run
44	By a ward who has attained majority, to set aside a transfer of property by his guardian.	Three years	When the ward attains majority.
48-B	To set aside sale of movable property comprised in a Hindu, Mahomedan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Do.	When the sale becomes known to the plaintiff.

Article	Description of suit	Period of limitation	Time from which period begins to run
107	By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	Three years	The date of the payment.
118	To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Six years	When the alleged adoption becomes known to the plaintiff.
119	To obtain a declaration that an adoption is valid.	Do.	When the rights of the adopted son, as such, are interfered with.
120	Suit for which no period of limitation is provided elsewhere in this schedule.	Do.	When the right to sue accrues.
124	For possession of an hereditary office.	Twelve years	When the defendant takes possession of the office adversely to the plaintiff. <i>Explanation.</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125	Suit during the life of a Hindu or Mahomedan female by a Hindu or Mahomedan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.	Do.	The date of the alienation.
126	By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Do.	When the alienee takes possession of the property.
127	By a person excluded from joint family property, to enforce a right to share therein.	Do.	When the exclusion becomes known to the plaintiff.
128	By a Hindu for arrears of maintenance.	Do.	When the arrears are payable.

Article	Description of suit	Period of limitation	Time from which period begins to run
129	By a Hindu for a declaration of his right to maintenance.	Twelve years	When the right is denied.
134-A	To set aside a transfer of immovable property comprised in a Hindu, Mahomedan or Buddhist religious or charitable endowment made by a manager thereof for a valuable consideration.	Do.	When the transfer becomes known to the plaintiff.
134-B	By the manager of a Hindu, Mahomedan or Buddhist religious or charitable endowment, to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	Do.	The death, resignation or removal of the transferor.
134-C	By the manager of a Hindu, Mahomedan or Buddhist religious or charitable endowment to recover possession of movable property comprised in the endowment which has been sold by a previous manager for a valuable consideration.	Do.	The death, resignation or removal of the seller.
140	By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immovable property.	Do.	When his estate falls into possession.
141	Like suit by a Hindu or Mahomedan entitled to the possession of immovable property on the death of a Hindu or Mahomedan female.	Do.	When the female dies.
142	For possession of immovable property when the plaintiff, while in possession of the property has been dispossessed or has discontinued the possession.	Do.	The date of the dispossession or discontinuance.
144	For possession of immovable property or any interest therein not hereby otherwise specially provided for.	Do.	When the possession of the defendant becomes adverse to the plaintiff.

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