Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Joopoody Sarayya and others v. *Pulavarti Lakshmanaswamy, from the High Court of Judicature at Madras (P.C. Appeal No.* 79 *of* 1911); *delivered the* 19*th March* 1913.

PRESENT AT THE HEARING:

LORD ATKINSON.
LORD SHAW.
LORD MOULTON.
SIR JOHN EDGE.
MR. AMEER ALI.

[DELIVERED BY LORD SHAW.]

This is an Appeal against a Decree of the High Court of Judicature at Madras, dated the 10th December 1908, which reversed a Judgment of the Subordinate Judge of Rajahmundry, dated the 16th September 1905. The suit as brought included a claim for partition of certain family property. That part of the suit has been settled. What remains constitutes the subject of the present Appeal. The assertion is that the Plaintiffs' family has a half share, along with the Defendant (the present Respondent) in a partnership business carried on in Akuvidu. The High Court has held that this claim is barred by limitation and has dismissed the suit.

It is unnecessary to refer to various other pleas in the case, including those founded on an alleged misjoinder of causes of action,

[18] A J 225. 125.—3/1913. E. & S.

because, in the opinion of their Lordships, the conclusion reached by the High Court on the plea of limitation was clearly correct.

In or about the year 1868 a partnership business was started in Kottapally. At a later date a business was started at Akuvidu. This latter was throughout under the management of one Venkanna, the adoptive father of the Respondent. The position of Venkanna (who was the second Defendant in the suit) was this: He maintained that in both businesses he had a half share; that in, or shortly before, the year 1891, an arrangement was made under which the joint family represented by the Appellants made a partition of their family property; and it cannot be denied that, with regard to the Kottapally business, this partition became an accomplished fact. Venkanna, however, further maintained that there were cross-claims; that he was entitled to a certain share of the assets of the Kottapally business; that, on the other hand, the joint family was entitled to a certain share in the Akuvidu business; that these claims were set against each other, and that from 1891 the joint family has had no share in the Akuvidu business.

It has to be admitted that, if a partition has taken place of the joint family property, it is at least not unlikely that that would have extended to all the businesses which the joint family shared; and it must further be conceded that, if the joint family's interests were divided, a dissolution of the Akuvidu partnership with Venkanna was naturally incident to the situation thus created. Different *personae* had arisen in law, and with these it was open to Venkanna to say whether he should be allied in partnership or not. What Venkanna does say is, that the dissolution—thus not

unnatural in the situation of the joint family affairs in 1891—did in fact take place. If this is so, the suit, which was initiated 11 years after that event, is, of course, barred by the three years' limitation established by section 106 of the Limitation Act.

In the opinion of their Lordships, the High Court has come to a correct conclusion, and it is quite unnecessary to enter upon the details of the case, which, in the view taken by the Court, amply confirm the result which has been reached.

Four salient points may simply be noted. (1) Prior to 1891, and year after year, detailed accounts, suitable as those of a current partnership business, were rendered as between the joint family, on the one hand, and Venkanna on the other. After that year these accounts entirely ceased. But (2) in the year 1891 an account was furnished of a different character. That account, in their Lordships' opinion, was to all intents and purposes not a revenue but a capital account, showing a complete division of the partnership shares. It was, in short, in form and in substance an account entirely suited to the event and purposes of a dissolution of partnership. (3) From that time forward Venkanna managed the Akuvidu business without any interposition or interference by the joint family or any representative thereof in their interest. It is true that certain requests were made to Venkanna for payment, but these were requests, not for a share of profit, but for the payment of the balance due upon the dissolution account. Finally (4), Venkanna having been apparently throughout maintaining that his liabilities under the Akuvidu business were balanced by his share of the assets in the Kottapally business, the

dispute was arranged by a letter cf the 3rd May 1901, the authenticity and importance of which is not denied. It was written to Venkanna by the first three Plaintiffs and by Lakshmanaswamy, who is called as the first Defendant. In fact, it is the letter of the members of the joint family; and in this letter, signed by them, they admit to Venkanna "you are singly carrying on business," and they refer to the "verbal arrangement before "this among ourselves that the property "acquired by you by carrying on business at "Akuvidu, and the property acquired by us "by carrying on business at Kottapally, should "be duly divided and taken according to "shares." They then narrate their unanimous request for a settlement, and agree to take from Venkanna a sum according to his wishes. Serious questions might be raised as to whether the writers of such a letter were not barred from thereafter instituting the present suit, but for the purpose of the point of this decision it is sufficient to say that it completely confirms the idea of a dissolution of partnership having been effected at a previous date, and it squares with the events on that footing which took place in the year 1891.

Mr. Dunne presented a careful argument, in which he strongly insisted that, as the Akuvidu partnership was one at will, it must be presumed to last till now, unless a definite date of dissolution could be put forward and made out. But, in their Lordships' opinion, this has been done, and in a substantially conclusive manner. When annual accounts ceased, and a final account, showing the division of both capital and revenue was made out, the presumption was for dissolution as at the definite date of the year in account

thus closed. The cessation of the annual accounts points to some radical change having taken place, and the other circumstances above noted leave little doubt upon the mind that that change was the dissolution of the firm as in the year mentioned.

All other questions in the case are thus at an end. Their Lordships will humbly advise His Majesty that the Appeal should be dismissed and the Judgment of the High Court affirmed. The Appellants will pay the costs of this Appeal.

In the Privy Council.

JOOPOODY SARAYYA AND OTHERS

v.

PULAVARTI LAKSHMANASWAMY.

DELIVERED BY LORD SHAW.

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