Supreme Court of India
Kalyani (Dead) By Lrs. vs Narayanan And Ors. on 27 February, 1980
Equivalent citations: AIR 1980 SC 1173, 1980 Supp (1) SCC 298, 1980 2 SCR 1130
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Bench: A Sen, D Desai, V Tulzapurkar
JUDGMENT D.A. Desai, J.

1. On a certificate granted by the Full Bench of the High Court of Kerala, original plaintiff, a Hindu widow who was seeking partition of a share to which her deceased husband was entitled, having lost in both the Courts, has filed this appeal. The High Court granted the certificate under Article 133(1)(c) of the Constitution as in its opinion the following substantial questions of law arise from the judgment rendered by it:

1. Whether under the Mitakshara Law the parties are governed by customary law, and, in the absence of any rule of customary law on the point in question, by Mitakshara Law property can be divided, albeit by a family settlement, between two artificial units of a joint family, one comprising the sons of a father by his first wife, the first wife and his step mother, and the other comprising his son by his second wife and the second wife so as to constitute each unit into a coparcenary with rights of survivorship between its members; and

2. Whether the use of the word 'tavazhi' (in any case a misnomer) in describing the two units in the will, Ext. P-l left by the father and held to be the basis of the family settlement, is sufficient in the circumstances, to establish an intention that the members of each unit were to take the property as coparceners and not as tenants-in-common, the grouping into units being only for convenient enjoyment?

2. The factual background from which, according to the High Court the aforementioned two questions emerge for consideration of this Court may be stated.

3. One Karappan, son of Chulliparambil Krishnan, had two wives Nani and Ponni. Defendant 1 Krishnan, defendant 2 Shankaran, one Raman, husband of plaintiff Kallyani, and deceased Madhavan, husband of defendant 3 and father of defendants 4, 5 and 6, were his sons by first wife Nani, and one Kesavan was his son by the second wife Ponni. He had six daughters, four by the first wife and two by the second wife. One Valli was the second wife of his father and she had three daughters. Karappan and his family are Ezhavas and in the matter of inheritance, succession and on the question of personal law they were governed essentially by customary law and in the absence of any specific custom they are governed by the Hindu Mitakshara Law. Karappan executed a registered deed variously described as a will or a deed of partition or evidencing family arrangement, Ext. P-l dated January 25, 1910, the salient features of which may be reproduced. After narrating his near relations including his two wives, male and female children born to each and his father's second wife and her children, the following recitals are worthy of note:

There are as belonging to me now properties to the value of Rs. 8000/- mentioned in the sub-joined schedules A and B as my tarwad properties and also my self-acquired properties and properties to

the value of Rs. 200/- of the C schedule which is set apart as common properties.

Since I am seriously ill and in order that there may not arise any dispute in future in respect of properties belonging to me, I have resolved today the following with regard to the course of enjoyment of the said properties after my death.

I myself shall have the full powers of disposition over all the properties described in A, B and C schedules during my life time and after my death, out of the properties to the value of Rs. 8000/-, Rs. 1300/- worth of properties shall vest in each of my male issues, Rs. 300/- in my first wife, Rs. 1000/- in my second wife since she is sick and Rs. 200/-in my father's second wife.

On the above basis I have set apart to be vested in them after my death Rs. 5200/- worth of properties to the first tavazhi male issues, Rs. 300/- to my first wife and Rs. 200/- to my father's wife, altogether properties worth Rs. 5700/- scheduled to A schedule; Rs. 1300/- worth of properties comprising items 1 to 4 and 6 to 12 of B schedule to the second tavazhi, inclusive of an owelty of Rs. 227 as, 8 ps. 5 decided to be paid by the first tavazhi to the second tavazhi, and item 5 of B schedule worth Rs. 1000/-to my second wife.

... ...

And that 1/5th share of assessment of C schedule property shall be paid annually by Kesavan in the Amsom and receipt obtained.

It is also resolved that each tavazhi shall meet the travelling expenses of female issues and maintain properly the women who return on the death of their husbands, that both tavazhis shall equally maintain the children of my aunt and my sister and that since C schedule properties are partitioned now, all my male issues shall have equal rights over the property after my death.

4. This is a registered deed. Soon thereafter, in February 1910, Karappan died. Raman, the husband of the plaintiff, the third son of the first wife, died on February 20, 1936. Plaintiff widow of Raman sued for partition and separate possession of her undivided 1 /4 share in properties set out in A, B and C schedules to the plaint. It is necessary to clarify here that there) were A, B and C schedules annexed to Ext. P-l which, for clarity of understanding, would be referred to as the Will of the deceased though it would be presently pointed out that it is ineffective as a Will. Schedules A and B to Ext. P-l specify certain properties. Properties set out in schedule B to Ext. P-l except item No. 5 were awarded to Kesavan, the son by the second wife, and item No. 5 to the second wife. Properties in schedule A to Ext. P-l subject to adjustment pointed out in Ext. P-l were given to the first wife and her sons. Properties set out in schedule C to Ext. P-l were kept undivided and were the subject-matter of another suit filed, by the present plaintiff which has ended in a decree in her favour and which decree has become final. On the other hand, properties set out in schedule A to the plaint are the very properties which are shown in schedule A to Ext. P-l. In respect of properties set out in the schedule B to the plaint it is alleged that they were acquired by the joint labour of defendants 1 and 2, deceased Raman and Madhavan, and it is equally true of properties set out in schedule C to the plaint but they were separately set out because they stood in the name oil the wife

of defendant 1. Plaintiff, however, claimed 1/4 of her share in all the properties set out in schedules A, B and C to the plaint.

5. The suit was principally resisted by defendant 1 as per his written statement dated July 12, 1958. It was in terms contended that the properties dealt with by Ext. P-l were the joint family properties of Karappan and his sons and that Karappan was not entitled to and had no authority in law to execute a Will in respect of the properties. There is an averment which may be extracted. It reads:

Even though Karappan has no right to execute the Will accordingly, what Karappan actually did was that he partitioned the properties between the two tavazhies in order to avoid future quarrel between the two wives and their children. As a father he has got the right to partition his properties according to the custom of the community and according to the Mitakshara law, that Will would be valid as a deed of partition and accordingly accepting the same later, properties had been taken possession by the two tavazhies separately. Even though the execution of such a deed was against procedure, it was in order to honour the wishes of deceased Karappan that the same was acted upon.

In respect of plaint B schedule properties, the contention was that it was acquired by the private income of the first defendant and that schedule 'C' properties belonged to the wife of defendant 1 and that plaintiff has no share in it. It was also contended that as the four sons by the first wife of Karappan constituted a tavazhi, it has all the incidents of a coparcenary and, therefore, succession was governed by survivorship and hence the plaintiff has no share in schedule A properties.

6. The trial Court framed as many as 12 issues. The important findings of the Trial Court are that Ext. P-l is neither effective as a Will nor as a deed of partition. Without specifically so saying that Ext. P-l would be effective as a family arrangement, it was held that Ext. P-l had the effect of constituting a coparcenary of four brothers, sons of first wife of Karappan and that it was their joint family property and they did not hold as tenants-in-common but as joint tenants and were governed by survivorship in the matter of succession. The contention that even in such a situation the widow would be entitled to her share because of a customary right was negatived. In respect of B and C schedule properties it was held that they belonged exclusively to defendant 1 and his wife and plaintiff cannot claim a share in them. Consistent with these findings, the plaintiff's suit was dismissed. A Full Bench of the Kerala High Court heard the first appeal preferred by the plaintiff. The High Court substantially agreed with the findings of the trial Court and specifically held that Ext. P-l furnished important evidence of a family arrangement accepted and acted upon by all the parties affected thereby. It was held that as family arrangement it is binding and it indicated that the division was per branches, therefore, the four sons by the first wife of Karappan divided as one branch and one son alone by the second wife separated as a different branch and as four sons by the first wife constituted a joint family, succession would be governed by survivorship and the plaintiff is not entitled to claim any share in schedule A properties. On the question of acquisition of schedule B and C properties, the finding of the trial Court was confirmed.

7. It may be mentioned that plaintiff had filed another suit for partition of properties set out in C Schedule to Ext. P-l and that suit was decreed in plaintiff's favour and that decree has become final.

8. Two questions of general importance framed by the High Court are rather involved and confusing and do not pinpoint the attention on questions of law emerging from the judgment of the High Court.

9. The first question that needs to be answered is whether Ext. P-l styled, as a Will by the deceased Karappan would be effective as a Will. If by Ext. P-l deceased Karappan attempted to make a Will of the ancestral property in his hand in which his sons had acquired interest by birth, obviously he had no power to make a Will in respect of such property. Ext. P-l does not purport to devise by Will the individual share of testator Karappan in the joint family property but he attempts to make a will of all the properties, ancestral and self-acquired and even to dispose of property in which his sons had interest by birth, by will. He has not claimed any share in the property but claimed a right to deal with ancestral property as he desired. In Ext. P-l itself he describes properties set out in schedules A and B annexed to Ext. P-l as his tarvad properties. Expression 'tarvad' in Marumakkattayam Law is the name given to the joint family consisting of males and females, all descended in the female line from a common ancestress. A tarvad may consist of two or more branches known as thavazhies; each tavazhi or branch consisting of one of the female members of the tarvad and her decendents in the female line (see Mayne's Hindu Law and Usage, 11th Edn, pp. 792-93.) Thus when property is described as tarvad property in a broad sense it is admitted to be joint family property. This also becomes clear from the recital in Ext. P-l that properties in A and B schedules were tarvad properties and property in C schedule were claimed by him as his self-acquired properties and they were to be kept joint and were not sought to be dealt with by Ext. P-l. Therefore, to the extent Ext. P-l purports to dispose of ancestral properties by will it would be ineffective as a will as testator Karappan had no power or authority to dispose of by will ancestral properties in his hand. And as he has not attempted to dispose of his undivided share in the ancestral properties by Ext. P-l it is not necessary here to examine the question whether Mitakshara law as administered in Tamil Nadu and Kerala enables an undivided coparcener to dispose of his share in joint family property by will. Therefore, Ext. P-l is not effective as a will and the respondents did not invite us to affirm their rights under Ext. P-l as if it is a binding will.

10. The next stage in the unfolding of the case is whether Ext. P-l is effective as a partition. Partition is a word of technical import in Hindu law. Partition in one sense is a severance of joint status and coparcener of a coparcenary is entitled to claim it as a matter of his individual volition. In this narrow sense all that is necessary to constitute partition is a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severally. Such an unequivocal intention to separate brings about a disruption of joint family status, at any rate, in respect of separating member or members and thereby puts an end to the coparcenary with right of survivorship and such separated member holds from the time of disruption of joint family as tenant-in-common. Such partition has an impact on devolution of shares of such members. It goes to his heirs displacing survivorship. Such partition irrespective of whether it is accompanied or followed by division of properties by metes and bounds covers both a division of right and division of property (see Approviar v. Rama Subha Aiyar (1886) 11 M. I. A. 75 quoted with approval in Smt. Krishnabai Bhritar Ganpatrao Deshmukh v. Appasaheb Tuljaramarao Nimbalkar and Ors. . A disruption of joint family status by a definite and unequivocal indication to separate implies separation in interest and in right, although not immediately followed by a de facto

actual division of the subject-matter. This may at any time, be claimed by virtue of the separate right (see Girja Bai v. Sadashiv 41 I. A. 151. A physical and actual division of property by metes and bounds follows from disruption of status and would be termed partition in a broader sense.

11. There was some controversy whether a Hindu father governed by Mitakshara law has a right to partition ancestral properties without the consent of his sons. After referring to Mitakshara, I, ii, 2, Mayne in 'Hindu Law & Usage', 11th Edn. p. 547, states that a Hindu father under the Mitakshara Law can effect a partition between himself and his sons as also between his sons inter se without their consent and that not only can he partition the property acquired by himself but also the ancestral property. The relevant text may be extracted:

The father has power to effect a division not only between himself and his sons but also between the sons inter se. The power extends not only to effecting a division by metes and bounds but also to a division of status.

Similarly, in Mulla's Hindu Law, 14th Edn., p. 410 (para 323), it is stated that the father of a joint family has the power to divide the family property at any moment during his life time provided he gives his sons equal shares with himself, and if he does so, the effect in law is not only a separation of the father from the sons, but a separation of the sons inter se. The consent of the sons is not necessary for the exercise of that power. It, therefore, undoubtedly appears that Hindu father joint with his sons governed by Mitakshara law has the power to partition the joint family property at any moment during his life time.

12. Mr. Krishnamoorty lyer urged that even though undoubtedly a Hindu father joint with his sons and governed by Mitakshara law has the power to partition the joint family property, this power enables him to partition the property by metes and bounds but he has no power merely to disrupt the joint family status unaccompanied by division of property by metes and bounds. The limited question that needs answer in this case is whether a Hindu father joint with his sons governed by Mitakshara law has the power to disrupt the joint family status being a first step in the stage of dividing the property by metes and bounds. The wider question whether a coparcener of a coparcenary governed by Mitakshara law brings about a disruption of joint family status by definite and unequivocal indication of his intention to separate himself from the family would constitute disruption of status qua the non-separating members need not be examined. A Hindu father joint with his sons and governed by Mitakshara law in contradistinction to other manager of a Hindu undivided family or an ordinary coparcener enjoys the larger power to impose a partition on his sons with himself as well as amongst his sons inter se without their consent and this larger power to divide the property by metes and bounds and to allocate the shares to each of his sons and to himself would certainly comprehend within its sweep the initial step, viz., to disrupt the joint family status which must either precede or be simultaneously taken with partition of property by metes and bounds. This view taken in Kandaswami v. Doraiswami Ayyar [1880] I.L.R. 2 Mad. 317, does not appear to have been departed from. Further, the text from Mayne's book extracted in the preceding paragraph shows that the weight of authority is against the proposition canvassed for by Mr. Iyer. It does, therefore, appear that a Hindu father governed by Mitakshara law has power to partition the joint family property belonging to the joint family consisting of himself and his sons and that this

power comprehends the power to disrupt joint family status.

13. The question is, has Karappan as father exercised his power to partition the joint family property by Ext. P-l ? Even though the father has a right to make a partition of the joint family property in his hand, he has no right to make a partition by will of joint family property amongst various members of the family except, of course, if it could be made with their consent (see Brijraj Singh v. Sheodan Singh 40 I. A. 161. Whether it is effective as family arrangement will be presently examined. Therefore, if by Ext. P-l Karappan attempted to make a partition of the property by his will, Ext. P-l would be ineffective as a partition. By Ext. P-l Karappan does not divide his property by metes and bounds vesting the share of each in presenti in each of his sons.

14. One thing that is not in dispute is that Karappan did not intend Ext. P-l to be effective from the date on which it was executed. In his own words he states that he was seriously ill and as he would like to avoid a dispute in future in respect of his properties and, therefore, he resolved that his property shall be enjoyed after his death in the manner stated in Ext. P-l. He reserved to himself the full powers of disposition over all the properties more particularly described in the various schedules annexed to Ext. P-l during his life time and whatever directions were given in Ext. P-l were to be effective only after his death. At two places in terms he stated that the dispositions made by Ext. P-l were to be effective after his death. It is, therefore, inescapable that Ext. P-l was not to be effective as a partition in broader sense, namely, dividing property by metes and bounds from the date on which it was executed. It was to be effective from a future date and that future uncertain event was the death of Karappan and that during the time he would remain alive he would deal with the properties at his sweet will. Further, there was no effective partition by metes and bounds by Ext. P-l though the shares of sons were specified as also the provision for female members was made. If intention of the testator is to be gathered from the language of Ext. P-l Karappan intended it to be a will to be effective after his death. He never intended it to be a partition in presenti. Therefore, Ext.P-1 cannot be effective as a deed of partition in the broader sense, i.e. partition by metes and bounds.

15. What then is the effective of Ext. P-l on the joint family of which Karappan was father-cum-manager ? The respondents contend that it is a family arrangement providing for carving out branchwise (shakha per wife) separation of interest in the joint family properties and as it was unreservedly accepted by all affected thereby after the death of Karappan, it is binding on all. Appellant contends that Ext.P-1 had the effect of disrupting the joint family status and from that date members of the joint family entitled to their shares in the joint family property, held as tenants-in-common and not as joint tenant with the result that inheritance by survivorship, a special feature of a Hindu coparcenary, would be displaced by Hindu law of succession, the property going to the heirs recognised by law.

16. Defendant 1 who contested the suit in terms stated that Ext.P-1 was not effective as a will. He than stated that Ext.P-1 purports to partition the property between the two tavazhies represented by Karappan's two wives and their respective male offspring. It may, however, be stated that nowhere in the written statement he has put forth the contention that Ext.P-1 evidences a family arrangement assented to by all affected thereby. That case appears to have been made out by the High Court for

the first time and since the plaintiff has been non-suited on the finding that Ext.P-1 was a family arrangement which provided for a coparcenary of four sons of the first wife of Karappan, retaining inheritance by survivorship amongst the four members it is necessary to examine the contention whether Ext.P-1 provides for a family arrangement assented to by all concerned. An ineffective will sometimes though not always, if otherwise consented by all adult members, may be effective as a family arrangement but as the father of a joint Hindu family has no power to impose a family arrangement under the guise of exercising the power of partition, the power which undoubtedly he has but which he has failed to effectively exercise, cannot in the absence of consent of all male members bind them as a family arrangement. What constitutes family arrangement has been fully examined by this Court in M.N. Aryamurthy and Anr. v. M.D. Subbaraya Setty (dead) through l.r. and Ors. . Broadly stated, it is that there must be an agreement amongst the various members of the family intended to be generally and reasonably for the benefit of the family and secondly the agreement should be with the object either of compromising doubtful or disputed rights or for preserving the family property or the place and (security of the family. Both these ingredients appear to be absent in this case. In Brijraj Singh's case (supra) a father purported to make a will in which he recorded a partition of the joint family property amongst his three sons. He did not take a share for himself and simultaneously gave double share to his eldest son. There were usual recitals of partition and allotment of shares and it was further stated that in anticipation of execution of the deed various sharers were put in possession of property allotted to each of them. This was done two months prior to the execution of the so-called will. The document was held ineffective as a will but on evidence it was found that all concerned had acquiesced in the arrangement evidenced by the deed and the deed was intended to operate from the date of its execution and, therefore, it evidenced a family arrangement contemporaneously made and acted upon by all the parties and hence binding. Similarly in Lakshmi Chand v. Anandi 53 I. A. 123, two brothers having no male issue and constituting a joint Hindu family governed by Mitakshara, signed a document, described therein as an agreement by way of will. The document provided in effect that if either party died without male issue, his widow should take a life interest in a moiety of the whole estate and that if both the parties died without male issue, the daughters of each, or their male issue, should divide the father's share. The document was registered. A few days after its execution one brother died, and his widow was entered as owner of a moiety of the estate. Subsequently the other brother sued for a declaration that the document was null and void. Privy Council held that the document could not operate as will but that as a co-sharer in a Mitakshara joint family with the consent of all his co-sharers he could deal with the share to which he would be entitled on a partition and was binding as family arrangement. To be effective as a family arrangement the deed must be one intended to operate from the date of its execution, a feature wanting in Ext.P-1, and it must be assented to and acquiesced in and acted upon by all affected thereby. At the time of execution of Ext.P-1 there is no evidence as to who were the adult members of the family other than Karappan who consented to the alleged family arrangement. One thing, however, may be pointed out that defendant 1 gave his age as 87 years on December 29, 1959, when his evidence commenced. Presumably he must have been born in 1872. But there is no evidence about the age of other children of Karappan. The only evidence as to the consent of the male members is that after the death of Karappan all male members acted according to the wishes of Karappan as disclosed and ordained in Ext.P-1. Assuming it to be so, Ext.P-1 was to operate after the death of Karappan and not from the date of execution. The High Court after referring to Brijraj Singh's case (supra) overlooked the fact that in accepting

the deed before it, the Judicial Committee was impressed by the fact that it was intended to speak from the date on which it was written and not future date, viz., death of the writer. Ext.P-1 in terms reserves to Karappan his right to deal with the property at his sweet will and was to be operative after his death. The High Court completely overlooked this material difference. Assuming that Ext.P-1 was to be treated as family arrangement after the death of Karappan, the absence of any evidence of agreement amongst family members entitled to a share, to the terms of Ext.P-1 when it was executed, the absence of any dispute at or about the time Ext.P-1 was executed amongst the members of the family sought to be settled by Ext.P-1; and the absence of evidence that arrangement was necessary for the security of the family or property would wholly negative the contention that Ext. P-l would furnish evidence of family arrangement. We have grave doubt whether a Hindu father can impose family arrangement sans direct evidence of consent of each of his sons, to be effective after his death. Therefore, Ext.P-1 does not furnish evidence of family arrangement.

17. Now, if Ext.P-1 cannot be effective as a deed of partition inasmuch as it did not result in division of property by metes and bounds, its effect on continued joint family status may be examined. If it disrupted joint family status by its very execution, there was thereafter no question of directing any family arrangement to be effective from a future date as per its terms and even though it may spell out a family arrangement what effect the disruption of joint family status would have on the mode of succession has to be ascertained.

18. One thing is crystal clear that Ext. P-l is not a deed of partition in the sense it does not purport to divide the property amongst various coparceners by metes and bounds. However, in Hindu law qua joint family and joint family property the word 'partition' is understood in a special sense. If severance of joint status is brought about by a deed, a writing or an unequivocal declaration of intention to bring about such disruption, qua the joint family, it constitutes partition, (see Raghavamma v. Chenchamma) . To constitute a partition all that is necessary is a definite and unequivocal indication of intention by a member of a joint family to separate himself from the family. What form such intimation, indication or representation of such interest should take would depend upon the circumstances of each case. A further requirement is that this unequivocal indication of intention to separate must be to the knowledge of the persons affected by such declaration. A review of the decisions shows that this intention to separate may be manifested in diverse ways. It may be by notice or by filing a suit. Undoubtedly, indication or intimation must be to members of the joint family likely to be affected by such a declaration.

19. Has not Ext.P-1 the effect of bringing about a disruption of joint family headed by Karappan and consisting of himself and his sons? The fact situation is that in Ext. P-l Karappan specified the share of each of his sons, the property allotted on share being valued at Rs. 1300/- each of the four by the first wife and one by the second wife, and vesting the share so specified in each of his sons. He also specified value of the property allotted to his first wife, to his second wife and to the second wife of his father. In the process he found that something more was given to the sons of his first wife and in order to restore the equilibrium of treating his sons equally, he directed that owelty to the tune of Rs. 227/- and odd be paid by the sons of the first wife to the sons of his second wife. This was with a view to correcting the inequality in division of shares. He also states that there will be two branches. He refers to them as tavazhies and himself and his family as tarvad. Tarvad is akin to joint family

and tavazhi is a branch of the family. The High Court, however, treated the use of the words 'tarvad' and 'tavazhi' and 'Karnavaran' to be inappropriate and hence inconsequential. Similarly, the High Court found specification of share of each of the male child as not indicative of a partition in the sense of disruption of joint family status.

20. Partition can be partial qua person and property but a partition which follows disruption of a joint family status will be amongst those who are entitled to a share on partition. On death of Karappan, Kesavan, the son of the second wife obtained a physical partition of the property, took his own share and left the family. There was first a disruption of the joint family by specifying the shares in Ext.P-1. Till disruption of joint family status takes place no coparcener can claim what is his exact share in coparcenary property. It is liable to increase and decrease depending upon the addition to the number or departure of a male member and inheritance by survivorship. But once a disruption of joint family status takes place, coparceners cease to hold the property as joint tenants but they hold as tenants-in-common. Looking to the terms of Ext.P-1 there was a disruption of joint family status, the shares were specified and vested, liabilities and obligations towards the family members were defined and imbalance out of unequal division was corrected. This certainly has effect of bringing about disruption of joint family status and even if there was no partition by metes and bounds and the coparceners continued to remain under the same roof or enjoyed the property without division by metes and bounds, they did not hold as joint tenants unless re-union is pleaded and proved.

21. It was, however, contended and the contention has found favour with the High Court that when Kesavan, the second wife's son of Karappan took the properties allotted to his share and left the family, as per terms of Ext. P-l four sons of Nani were constituted joint tenants or members of a coparcenary. In reaching this conclusion reliance was placed by the High Court on Palani Ammal v. Muthuvenkatachala Moniagar 52 IA 83. In that case, after referring to Appovier's case, (supra) it was observed as under:

But the mere fact that the shares of the coparceners have been ascertained does not by itself necessarily lead to an inference that the family had separated. There may be reasons other than a contemplated immediate separation for ascertaining what the shares of the coparceners on a separation would be. It is also now beyond doubt that a member of such a joint family can separate himself from other members of the joint family and is on separation entitled to have his share in the property ascertained and partitioned off for him and that the remaining coparceners without any special agreement amongst themselves may continue to be coparceners and to enjoy as members, of a joint family, what remained after such a partition of the family property. That the remaining members continued to be joint may, if disputed, be inferred from the way in which their family business was carried on after their previous coparcener had separated from them.

22. In Bhagwan Dayal v. Smt. Reoti Devi , this Court examined the effect of a separation of one member of a joint family on the joint family status and on the remaining members in the light of the Privy Council decision in Palani Animal's case, (supra) The relevant observation is as under:

The general principle is that every Hindu family is presumed to be joint unless the contrary is proved: but this presumption can be rebutted by direct evidence or by course of conduct. It is also settled that there is no presumption that when one member separates from others that the latter remained united; whether the latter remain united or hot must be decided on the facts of each case.

23. In fact, Judicial Committee in Balabux v. Rukhmabai ILR 30 IA 130 unequivocally held that there is no presumption when one coparcener separates from others that the latter remained united. An agreement amongst them must be proved either to remain united or to re-unite. In Sengoda v. Muthu I.L.R. 47 Madras 567, the High Court interpreted Palani Ammal's case to lay down that if a partition takes place with respect to one coparcener, the decree or the deed bringing about partition would provide a pointer as to the effect of the decree or the deed on the remaining coparceners. In Bhagwati Prasad Shah and Ors. Dulhin Rameshwari Juer and Anr. [1951] S.C.R. 603, this Court pointed out that the general principle undoubtedly is that a Hindu family is presumed to be joint unless the contrary is proved but where it is admitted that one of the coparceners did separate himself from the other members of the joint family and had his share in the joint property partitioned off for him, there is no presumption that the rest of the coparceners continued to be joint. There is no presumption on the other side too that because one member of the family separated himself there has been separation with regard to all. It would be a question of fact to be determined in each case upon the evidence relating to the intention of the parties whether there was a separation amongst the other coparceners or they remained united. Except that four sons by Nani remained under one roof and were joint in food and laboured together there is no evidence that they agreed to constitute a coparcenary assuming that a coparcenary a creature of law could be created by agreement. And if Karappan specified even the share of each of his sons by Nani in Ext. P-l, this evidence of remaining together is hardly sufficient to warrant a conclusion that these four sons constituted a coparcenary. Ext. P.I could not support such a conclusion and High Court was in error in spelling out such conclusion from Ext. P-l overlooking its specific direction of a specified share of each of his sons and liability to pay owelty.

24. A further submission that there was partition branchwise is un-known to Mitakshara law and is wholly untenable. In Mayne's Hindu Law, 11th Edn., p. 347, law as thus stated:

"So long as a family remains an undivided family, two or more members of it, whether they be members of different branches or of one and the same branch of the family, can have no legal existence as a separate independent unit; but all the members of a branch, or of a sub-branch, can form a distinct and separate corporate unit within the larger corporate family and hold property as such. Such property will be joint family property of the members of the branch inter se, but will be separate property of that branch in relation to the larger family.

The principle of joint tenancy is unknown to Hindu Jaw except in the case of the joint property of an undivided Hindu family governed by the Mitakshara law.

25. In Bhagwan Dayal's case (supra) legal position after referring to earlier decisions has been culled out as under:

Coparcenary is a creature of Hindu law and cannot be created by agreement of parties except in the case of reunion. It is a corporate body or a family unit. The law also recognizes a branch of the family as a subordinate cooperate body. The said family unit, whether the larger one or the subordinate one, can acquire, hold and dispose of family property subject to the limitations laid down by law.... Hindu law does not recognise some of the members of a joint family belonging to different branches, or even to a single branch, as a corporate unit.

26. Now, if five sons of Karappan each constituted a branch, obviously after one son as a branch separated unless a reunion is pleaded, other four cannot constitute a corporate body like a coparcenary by agreement or even by subsequent conduct of remaining together enjoying the property together. In Balkishen Das and Ors. v. Ram Narain Sahu and Ors. 30 I. A. 139, an ikrarnama was produced which showed that defined shares in the whole estate had been allotted to the several coparceners. There was a passage which gave liberty to any of the parties either to live together as a member of the joint family or to separate his own business. Mahabir was given four annas share and others defined shares in the remainder. Contention raised was that Mahabir alone separated and others remained joint. Subsequent conduct was relied upon to substantiate the contention that they remained together. Negativing this contention it was held that the ikrarnama effected a separation of estate even if the parties elected either to have a partition of their shares by metes and bounds, or to continue to live together and enjoy their property in common as before. Whether they did one or the other would affect the mode of enjoyment, but not the tenure of the property or their interest in it. The ikrarnama effected a separation in estate, its legal construction and effect could not be controlled or altered by the subsequent conduct. Once the shares were determined and allotted, it was held consistently with Appovier's case (supra) that this converted them from joint holders into tenants-in-common.

27. In Boddu Venkatakrishna Rao and Ors. v. Boddu Satyavathi and Ors. , the following passage in Mulla's Transfer of Property Act (Fifth Edn.), was approved:

The principle of joint tenancy appears to be unknown to Hindu law, except in the case of coparcenary between the members of an undivided family.

28. Once disruption of joint family status takes place as Lord Westbury puts it in Appovier's case, (supra) it covers both a division of right and division of property. If a document clearly shows the division of rights and status its legal construction and effect cannot be altered by evidence of subsequent conduct of parties.

29. Now, in this case Ext. P-l itself specifies the share of each member separately. There is no concept known to Hindu law that there could be a branch of a family wife-wise. To illustrate, if a Hindu father has two wives and he has three male children by the first wife and two by the second, each wife constituting a branch with her children of the family is a concept foreign to Hindu law. Therefore, tavazhi wife-wise stated in Ext. P-l has to be ignored and the contention that there was a partition amongst wife-wise branches as represented by each wife is equally untenable. Ext. P-l did bring about a specification of shares and once such shares were defined by the father who had the power to define and vesting the same there was a disruption of joint family. There was thus a

division of rights and division of property by allotment of shares. The mode of enjoyment immediately changed and members of such family ceased to be coparceners holding as joint tenants but they held as tenants-in-common. Subsequent conduct of some of them to stay together in the absence of any evidence of re-union as understood in law is of no consequence. In any event when Kesavan, the son of the second wife, sought and obtained physical partition of the properties allotted to him and left the family there being no evidence whether others agreed to remain united except the socalled evidence of subsequent conduct, which is irrelevant or of no consequence, disruption of status was complete. Therefore, the four sons of the first wife held the property as tenants in common.

30. There is evidence in the form of some documents showing that defendant 1 was described as Karnavaran of a coparcenary of the four sons of the first wife of Karappan and that the property was enjoyed as a joint family property. In view of our conclusion that such subsequent conduct is not conclusive of any agreement to reunite, it is not necessary to examine the evidence.

31. In view of our conclusion that since the execution of Ext. P-l on January 25, 1910, or after the death of Karappan in February 1910, when Kesavan, the son of the second wife took his share of the property left the family there was a disruption of the joint family and the sons of Karappan by his first wife held the property, which remained for them after Kesavan obtained his share, not as joint tenants but as tenants-in-common, the plaintiff would be entitled to the share to which her deceased husband Raman was entitled. Raman had 1/4 share in A schedule properties which the plaintiff would be entitled and therefore, there would be a preliminary decree in her favour to that effect. Plaintiff's claim to a share in properties set out in schedules B and C annexed to the plaint has been concurrently negatived by both the courts on the finding that they are the properties of defendant 1 and his wife and are not accretions to the property which devolved from Karappan. This concurrent finding of fact arrived at on appreciation of evidence appears to be correct and need not be disturbed. Therefore, plaintiff's suit with regard to a share in B and C schedule properties has been rightly dismissed.

32. At the commencement of hearing of the appeal it was pointed out that original plaintiff Kallyani is dead and there is some dispute between her two daughters Yashoda and Janaki about succession to the estate of Kallyani. Both had applied to the exclusion of each other for being substituted as legal representatives of the deceased. For purposes of this appeal both were substituted for the deceased appellant. It is not necessary to decide this question in this appeal because whoever of the two establishes her right to inherit the property of Kallyani would be entitled to the same but the dispute would be between Yashoda and Janaki and the other defendants have no right to be heard in that matter.

33. Accordingly this appeal succeeds and it is partly allowed. The judgment and decree of the trial Court and the High Court dismissing the plaintiff's suit in regard to A schedule property are set aside. Plaintiff's suit is decreed and it is declared that she has 1/4 share in properties set out in schedule A annexed to the plaint. A preliminary decree to that effect shall be drawn. Defendant 1 shall pay the costs of the plaintiff throughout.