Supreme Court of India
Al. Pr. Ranganathan Chettiar vs Al. Pr. Al. Periakaruppan ... on 24 May, 1957
Equivalent citations: 1957 AIR 815, 1958 SCR 218
Author: B Jagannadhadas
Bench: Jagannadhadas, B.

PETITIONER:
AL. PR. RANGANATHAN CHETTIAR

Vs.

RESPONDENT:
AL. PR. AL. PERIAKARUPPAN CHETTIAR(and connected appeal)

DATE OF JUDGMENT:
24/05/1957

BENCH:
JAGANNADHADAS, B.
BENCH:
JAGANNADHADAS, B.
SINHA, BHUVNESHWAR P.
MENON, P. GOVINDA

CITATION:
1957 AIR 815 1958 SCR 218

ACT:
Will-Constyuction-Disposition to adopted son, R--Adoption invalid-Whether R takes Property as persona designata. Deed-Construction-Trust, Whether created-Language of deed ambiguous-Subsequent conduct of Parties-Burden of proof.

HEADNOTE:
P adopted A in 1914 but on account of the acute differences which arose between them later, he made a second adoption of the first appellant in 1926 on the footing that such an adoption was permitted by special custom in Nattukottai Chetti families. In the partition suit filed by A for himself and on behalf of his minor son, the first respondent, the validity of the second adoption was challenged, but the matter was compromised by a Rajinama under which P was directed to pay the plaintiffs therein Rs. 75,000 each separately in lieu of their right to partition. Under the terms of para 3 of the Rajinama and the hundi executed by P in favour of the first respondent, the amount was to be paid to the order of three persons, viz., the father and mother of the first respondent and C, and the amount itself was to be invested in the name of the first respondent in Chetti firms to the order of P and C who were

to be in management. In 1929 P executed a will whereby he made arrangements for certain religious gifts and charities and gave the residue of the property to his wife for her life and thereafter to his second adopted son, the first appellant. On attaining majority in 1943 the first respondent filed two suits. The first was on the footing that the amount of Rs. 75,000 which was given to him under the Rajinama was constituted a trust for his benefit during his minority under the trusteeship of P and C, that the money was wrongfully appropriated by C, contrary to the terms of the Rajinama, and that P as a co-trustee with C was equally responsible for C's breach of trust and that the first respondent was entitled to have the amount paid out of the estate of P in the hands of the appellants. The second suit was for the recovery of the entire properties of P on the ground that the second adoption was invalid and that the will executed by P was ineffective. It was found that the adoption of the first appellant was invalid and that the customary adoption set up by P was made for temporal rather than spiritual purposes, and the question was whether, notwithstanding his description as adopted son in, the will in several places, the intention was that he was to take the property as Persona designata. As regards the terms of para 3 of the

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Rajinama the language used was ambiguous, whether the power of investment was vested in both P and C, but looking at the subsequent conduct of the parties it was found that it was C who was authorised to collect the amount of the hundi and to arrange for the investment of the same on the responsibility of the father and mother of the first respondent.

Held:(1) The question whether a disposition to a person is intended as a Persona designata or by reason of his filling particular legal status which turns out to be invalid, depends on the facts of the case and the terms of the particular document containing the disposition, and in the instant case, in view of the exclusion of the validly adopted son and his heirs from succession and the conduct of the parties for over 14 years in allowing the first appellant to retain the property, taking an overall picture of the various provisions of the will, it was clear that the first appellant was intended by the testator to take the property as persona designata and that the will was therefore effective to convey title to him.

Nidhoomoni Debya v. Saroda Pershad Mookerjee, (1876) L.R. 3 I.A. 253 and Fanindra Deb Raikat v. Rajeswar Das, (1884) L.R. 12 I.A. 72, referred to.

(2)Trusteeship is a position which is to be imputed to a person on clear and conclusive evidence of transfer of ownership and of the liability attached to such ownership on account of confidence reposed, and on such liability having been accepted by the alleged trustee, and in the present case there was no proof that P became a trustee for the

minor's fund and incurred liability for C's breach of trust.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 104 of 1954 and 169 of 1956.

Appeal by special leave from the judgment and decree dated November 13, 1950, of the Madras High Court in A. S. No. 484 of 1947 arising out of the judgment and decree dated December 21, 1946, of the Court of the Subordinate Judge, Devakottai in Original Suit No. 156 of 1944 and Appeal from the judgment and decree dated September 17, 1952 and October 24, 1952, of the Madras High Court in A.S. No. 243 of 1947 arising out of the judgment and decree dated December 21, in Original Suit No. 164 of the Subordinate Judge, Devakottai in Original Suit No. 164.

A.V. Vishwanatha Sastri and M. S. K. Aiyangar, for the appellants in C.A. No. 104 of 1954.

A.V. Vishwanatha Sastri and U. S. K. Sastri, for the appellants in C.A. No. 169 of 1956.

K.S. Krishnaswamy Iyengar and R. Ganapathy Iyer, for respondent No. 1 (in both the appeals).

1957. May 24. The judgment of Jagannadhadas and B. P. Sinha JJ. was delivered by Jagannadhadas J. Govinda Menon J. delivered a separate judgment.

JAGANNADHADAS J.-These two are appeals against two separate decrees of the High Court of Madras arising, out of two suits as between the same contesting parties with reference to a connected set of facts. Civil Appeal No. 104 of 1954 is before us by virtue of special leave granted by this Court under Art. 136(1) of the Constitution. Civil Appeal No. 169 of 1956 has come up by reason of certificate granted by the High Court under Art. 133(1)(a) of the Constitution. The parties to the litigation are Nattukottai Chetties, a wealthy banking community in South India who, at the time, were having large banking transactions in Burma and other places in South-East Asia. One AL. PR. Periakaruppan Chettiar (hereinafter referred to as Periakaruppa) owned and possessed considerable properties. He adopted one AL. PR. Alaska Chettiar (hereinafter, referred to as Alaska) in or about the year 1914. 'there arose acute differences between them from about the year 1924 owing to the alleged wasteful habits of Alagappa who ran into debts. This led to criminal complaints between them, each against the other, in 1926. (See Exs. P-5 and D-12). One of Alagappa's creditors obtained a decree against him and attached Alagappa's half share in the family residential house including the site on which it was situated. This resulted in a regular suit in which the question at issue was whether the site was ancestral site and whether the super-structure was constructed out of the ancestral funds. It was found that the site was ancestral Periakaruppa maintained that the super-structure which was substantial in value compared with the site was built out of his self-acquired funds and was not joint family property, while Alagappa and the attaching creditor contended to the contrary. The litigation went up to the High Court and the High Court accepted the contention of Periakaruppa and made a declaration that the site was ancestral and that the super-structure was the self- acquisition of Periakaruppa. The judgment of the High Court was dated November 19, 1926,

and is reported in Periakarappan v. Arunachalam (1). During the pendency of this litigation in the High Court the adopted son Alagappa filed a suit on September 9, 1926, on behalf of himself and his minor son by name AL. PR. AL. Periakaruppan Chettiar (hereinafter, for distinction, referred to as junior Periakaruppa) represented by his mother and next friend by name Mutbayi Act. It has to be mentioned that in or about June 27, 1926, Periakaruppa purported to make a second adoption of a 'young boy by name AL. PR. Ranganathan Chettiar (hereinafter referred to as Ranganatha) on the footing that such an adoption was permitted by special custom in Nattukottai Chetti families. The suit O.S. No. 114 of 1926 filed by Alagappa and his minor son, junior Periakaruppa, was therefore filed as against Periakaruppa and his second adopted son Ranganatha, who at the time was also a minor. It was for delivery of a half share of the properties of the family on the footing that all the properties were joint family properties and for a declaration that the second adoption was invalid. The first defendant therein, Periakaruppa,- filed a written statement contesting both these matters and claiming that all the suit properties in their entirety were his self- acquisition and that the plaintiffs had absolutely no rights therein and also asserting that the second adoption was valid. Before the suit proceeded to the stage of issues and trial, the dispute between the parties was compromised by a Rajinama brought about by four Panchayatdars, who were all respectable members of the Nattukottai Chetti community. Some of the questions that arise in the present appeals centre round the proper construction of some of the terms of this. Rajinama, which will be noticed later. It is sufficient to state at this stage that by that Rajinama the two plaintiffs, Alagappa and his (1) (1926) I.L.R. 50 Mad. 582, minor son, junior Periakaruppa, obtained Rs. 75,000 each and Alagappa's wife Muthayi Achi, the mother of the minor son and his next friend in the suit, was to get a sum of Rs. 14,000 as her Stridhan, These amounts were paid by means of four hundis, Rs. 25,000 and Rs. 50,000 for Alagappa, Rs. 75,000 for junior Periakaruppa and Rs. 14,000 for the mother, Muthayi Achi, on Nattukottai Chetti bankers of Periakaruppa in Burma. It was one of the express terms of the Rajinama that all the properties mentioned in the plaint in that suit and other properties belonging to the first defendant, Periakaruppa, were admitted to be his self- acquisitions and that the plaintiffs therein had. no right and connection whatsoever in any of them or in the charities founded by Periakaruppa and in the properties belonging thereto or their management, either in the lifetime of Periakaruppa or subsequent thereto. It was also one of the specific terms of the Rajinama that the plaintiffs should remove themselves from the family house with all their belongings and that the possession of the aforesaid house be delivered to Periakaruppa. It was also expressly stipulated that the petition then pending for leave to appeal to the Privy Council against the judgment reported in Periakaruppan v. Arunachalam (1) was to be withdrawn. This compromise was certified to be for the benefit of the minor plaintiff concerned, as also of the minor defendant Ranganatha and was accepted by the Subordinate Judge before whom the compromise petition was filed. As a result, the compromise was accepted by the court on August 15, 1927, and the suit was dismissed in terms thereof on the same date. About a year and a half later Periakaruppa executed a will on April 4, 1929. The genuineness and due execution thereof are not in question. But the effect of that will is also one of the main points in dispute. Periakaruppa died about three months later i.e. on July 14, 1929, and his wife Lakshmi Achi died within a year thereof on March 11, 1930. By the will, broadly speaking, Periakaruppa made arrangements for certain religious gifts and (1) (1926) I.L.R. 50 Mad. 582.

charities and made arrangements for the management thereof and gave the residue of the property to his wife Lakshmi Achi for her life and thereafter to his second adopted son Ranganatha. Ranganatha, who, some time in or about the date of Lakshmi Achi's death in 1930, appears to have attained majority, has been in undisputed possession and enjoyment of Periakaruppa's properties ever since till late in 1944. Alagappa's son junior Periakaruppa attained majority in December, 1943, and filed two suits on November 11, 1944, in the Subordinate Judge's Court of Devakottai, one numbered as O.S. 156 of 1944 and the other as O.S. 160 of 1944. O.S. No. 156 of 1944 was on the footing that Rs. 75,000 which was given to him under the above mentioned Rajinama of the year 1927, was, under the terms thereof constituted a trust for his benefit during his minority under the trusteeship of Periakaruppa himself and another person A. P. S. Chockalingam Chettiar of Athangudi, (hereinafter referred to as Chockalingam) the junior paternal uncle of the minor's mother, Muthayi Achi, and that the money was wrongly appropriated by Chockalingam owing to his straightened circumstances. His case was that Periakaruppa as a co- trustee with Chockalingam was equally responsible for breach of the trust and that therefore he was entitled to have the moneys found due on account, paid out of the estate of Periakaruppa in the hands of Ranganatha as well as from the estate of Chockalingam in the hands of his son. The second suit O.S. No. 164 of 1944 was a suit to recover the entire properties of Periakaruppa in the possession of Ranganatha for himself and his father Alagappa who was made the first defendant in the suit, on the ground that Ranganatha's adoption was invalid, that the will of Periakaruppa was ineffective and that the properties devolved on himself and his father Alagappa. It may be noticed that so far as the father Alagappa is concerned the suit would prima facie be time- barred since it has been filed about 15 years after the death of Periakaruppa. The plaintiff junior Periakaruppa however filed the suit on the footing that in view of his minority for all this period until December, 1943, the suit was not barred. Hereinafter, for convenience, the first suit O.S. No. 156 of 1944 will be referred to as the trust suit, and the second suit O.S. No. 164 of 1944 will be referred to as the succession suit, In the succession suit the main questions that arose for decision were:

(1) whether the adoption of Ranganatha as a second adopted son was valid;

(2) if not, whether the will was effective to convey the property of Periakaruppa to Ranganatha after the death of his wife Lakshmi Achi, notwithstanding the invalidity of his adoption;

(3) whether, in case the will was ineffective the properties of Periakaruppa devolved on both Alagappa and his son junior Periakaruppa together or on Alagappa alone to the exclusion of junior Periakaruppa ;

(4) if-the devolution was on both together, whether the rights of junior Periakaruppa were barred by reason of s. 7 of the Indian Limitation Act, 1908 (Act IX of 1908). This involved the further questions:

(a) whether by and under the Rajinama Alagappa and his son became divided in status inter se so as to make s. 7 inapplicable.

(b) whether in case the devolution was on both together as members of a joint family, s. 7 had application to the factual situation in the family.

So far as the adoption of Ranganatha was concerned both the courts below, while holding that the adoption as a fact was proved, have found against existence of the custom pleaded as to its validity and hence concurrently found the adoption to be invalid. That conclusion is no longer in dispute in this Court. As regards the will both the courts held that the will was ineffective to vest any title in Ranganatha though on slightly different grounds. As regards question No. 4 relating to limitation, the two courts came to different conclusions with the result that the trial court dismissed the suit as barred by limitation, while the High Court reversed it and granted a decree for the half share of Periakaruppa's properties in favour of junior Periakaruppa holding that in respect of the other half share the rights of Alagappa were barred and that Ranganatha acquired the same by his adverse possession. As regards question No. (3) and the subordinate questions (a) and (b) of question No. (4), there appears to have been no serious question raised in the trial court by the defendant as to the exclusion of junior Periakaruppa by Alagappa in the matter of succession to Periakaruppa's properties, or any serious questions raised by the plaintiff as to the Rajinama bringing about a partition inter se between the father Alagappa and his minor son junior Periakarpppa and of Alagappa not being the de facto manager of the family. It was accordingly found by the trial court that both of them succeeded as members of the joint family and that therefore the minor, junior Periakaruppa, was barred by virtue of s. 7 of the Limitation Act. When the matter came up on appeal to the High Court, a question was raised that s. 7 would not be applicable in this case unless it was further made out that the father Alagappa was the de facto manager of the family consisting of himself and his minor son of which it is alleged there was no proof or finding. Both the Judges allowed this point to be raised and called upon the trial court to take evidence and submit a finding in respect of that contention. The trial court accordingly took evidence in regard thereto and returned a finding that on the evidence, both the father and the minor son were living as members of a joint family and that the father was in fact the de facto guardian. When the matter was rehear by the same Bench of the High Court on the return of the finding, the Bench did not go into the correctness or otherwise of this finding, on the view that this finding was of no consequence, if it is found that by virtue of the Rajinama both the father and the minor son became divided inter se. The learned Judges while realising that the finding was called for on the undisputed assumption that the father and the son were undivided in status, were of the opinion that there was nothing to prevent them from reopening the same and held on a construction of the Rajinama that it brought about divided status inter se between the father Alagappa and his minor son junior Periakaruppa.- In that view they found s. 7 of the limitation Act had no application to the case and same to the conclusion that the succession suit by junior Periakaruppa was not barred by limitation in so far as it related to his own share though barred in respect of Alagappa's share. Hence the succession suit ended in favour of junior Periakaruppa in respect of a half share of the properties left by Periakaruppa. As regards the trust suit the contentions raised were : (1)that under the Rajinama both Periakaruppa and Chockalingam became trustees in respect of the sum of Rs. 75,000 to be invested in Chetti firms as provided in the Rajinama;

(2)that as a fact the amount was invested with Chockalingam, one of the trustees themselves, contrary to the law; (3)that such investment itself constituted breach of trust for which

Periakaruppa was also responsible. It appeared on the evidence that out of the trust amount, a sum of Rs. 30,000/- was invested in the purchase of a house at Athangudi in South India (the place of Chocklingam) and that Alagappa and his minor son, the junior Periakaruppa, and his family have been since that purchase on July 23,1928, living in that house. At the trial, therefore, credit was given to this amount as being proper investment of the trust funds in the matter of account-taking by concession of the lawyer for junior Periakaruppa. The defendant Ranganatha in addition to contending that no trust was created, also contended that as a result of subsequent transactions junior Periakaruppa got the benefit not only of the purchase of the house above referred to but also of a mortgage executed in favour of himself and another by Chockalingam in 1930 for a lakh of rupees of which Rs. 70,000 was his, of which he obtained the benefit, and that therefore the alleged breach of trust must be taken to have been waived and that in any case he was entitled to have the mortgage document as much as the purchase of the house to be taken into consideration for reducing his liability in respect of the alleged breach of trust. These contentions were negatived by both the courts with the result that there was a decree against Ranganatha and his minor son in respect of half the loss occasioned by the breach of trust, payable out of the half share of Periakaruppa's properties in their hands. The result of the two judgments of the High Court in both the suits was against Ranganatha and hence the two present appeals before us by him.

It will now be convenient to take up first the con- sideration of the succession appeal. The points arising therein have already been set out in the preliminary narration and need no repetition. The main points argued before us on this appeal are-

(1)The conclusion of the High Court that the will of Periakaruppa was ineffective is erroneous and Ranganatha took under the will as persona designata.

(2) In case the will is held to be ineffective and in the view taken by the High Court that Alagappa and junior Periakaruppa became divided in status under the Rajinama the property of Periakaruppa devolved on Alagappa to the exclusion of junior Periakaruppa and hence the plaintiff has no right to sue.

(3)The conclusion of the High Court that the Rajinama brought about divided status inter se between the father Alagappa and the minor son junior Periakaruppa is erroneous and hence the suit is barred by virtue of s. 7 of the Limitation Act.

A few other minor points have been raised on both sides which, after consideration, appeared to be unsubstantial and we intimated our view at the hearing and it is not necessary to refer to and deal with them any further. We have heard elaborate arguments on the above three points and have given our careful consideration to them. It is obvious that having regard to the course of events in this family narrated earlier the primary question for consideration is whether or not the will left by Periakaruppa has brought about an effective disposition of his properties in favour of Ranganatha. It is only if that has become ineffective that the other questions argued before us on this appeal as set out above arise for consideration. In view of the fact that the genuineness of the will is not disputed and no question arises as to the disposing capacity of Periakaruppa, the plaintiff in this case, junior Periakaruppa, can succeed only if he displaces the will. He has accordingly raised three contentions.

1.That there is no effective dispositive clause in the will.

2.That the disposition, if any, in favour of Ranganatha under the will was an attempt to create an estate in tail- male and hence invalid.

3.The disposition in favour of Ranganatha was by reason of and on account of, his having been considered by the testator as his duly adopted son, i.e., the validity of the adoption was the basis and the condition for the disposition. Since that has now been found to be invalid, the disposition fails.

Of these three questions the first two though upheld by the trial court have been rejected by the High Court. We agree with the reasoning of the High Court on these two points and they do not call for any further consideration. We are satisfied that there is no substance in these contentions. The real question that arises on a consideration of the will is whether the disposition of the residue in favour of Ranganatha contained therein was to him as a _persona designata or is dependent on his being a duly and validly adopted son.

For a proper appreciation of this contention on both sides, it is necessary to set out the relevant clauses in the will. "(1) I am now 68 years of age, taking into consideration the fact that I have been in indifferent health for sometime past I have decided to make an arrangement after my lifetime in regard to my properties and in regard to the charities established by me and accordingly I have executed this will wholeheartedly.

(2)All the immovable and movable properties entirely, which belong to me as my own and which are in my possession are my self-acquired properties. Excepting myself no other person has any interest or right whatever in the said properties.

(3)..... (4)Sometime back I took as my foster (son), Alagappan, son of Nachandupatti Chidambaram Chettiar, and brought him up in my house and also got him married. But the aforesaid Alagappan conducted himself in immoral ways and had evil intentions and further fell into bad company and after being duped brought into existence several documents falsely and colourfully by making it appear that he had borrowed debts to the tune of about one lakh of rupees and also caused decrees to be passed in respect of some of the abovementioned debts and estranged my feelings and became inimical towards me, and left my family and was living separately for the past about 10 years and he was also living in. his father-in-law's house.

(5)Thereafter while the aforesaid person had instituted a suit O.S. No. 114 of 1926 against me in the Sub-Court of Devakotta for his share in the properties which were in my possession, some of our community people acted as the panchayatdars and gave an award in the above suit and a razinama was filed in the Court, and all the amounts which were payable by me according to the said razinama were already paid by me entirely. Neither the aforesaid Alagappa Chetti nor his heirs shall have any manner of right or interest whatever in the properties which are now in my possession and in the properties which might be acquired hereafter.

(6)Subsequently I took in adoption Nachandupatti Ramanathan Chettiar's son, namely, Ranganathan, aged about 17 1/2 years, and he is living with me.

(7)to (12)..... (13)My adopted son Ranganathan and his male heirs shall after the lifetime of my wife Lakshmi Achi properly conduct the aforesaid charities. In order to supervise and see whether Ranganathan conducts the charities properly without any defect whatever, I have appointed the following persons as the executors, namely, (1) my son-in-law Arunachalam Chettiar, son of Alagapuri Alagappa Chettiar who is interested in both myself and Ranganathan, the two sons of Kanadukathan AL. K. Chandra Mouli Chettiar, namely, (2) Karuppan Chetty, (3) Peria Karuppan Chetty, and (4) Murugappan, son of Konapattu Subra- manian Chettiar. The said persons shall accordingly supervise (the performance of the charities) in a proper manner.

(14) I am entertaining a desire that I should spend my lifetime and die at Tiruvarur alone. My body shall not be cremated according to our caste custom, and a samadhi (tomb) shall be erected for me, and a lamp shall be lit therein daily and a person shall be appointed to perform Neivedhiyam (by preparing food) with 1/4 measure of rice by the big measure daily. Guru pooja shall be performed once a year in the Star in which I die, by distributing food to the mendicants, and by spending an amount to the extent of Rs. 250 (Rupees two hundred and fifty) every year by inviting my relations. A sum of Rs. 15,000 (rupees fifteen thousand) shall be sent for and obtained from the Saigon firm from out of my own funds for the aforesaid Tirupani (service) in the temple and my wife shall conduct the aforesaid Tirupani. The daily expenses of the Samadhi aforesaid and Guru pooja etc., shall be met from the Patasala charity funds and conducted.

(15) Apart from the properties which have been set apart for the abovementioned charities and the properties which have to be newly purchased hereafter for the same, as my adopted son Ranganathan and his male heirs have to take all the immovable and movable properties belonging to me and as the aforesaid adopted son namely Ranganathan is now a minor the said Ranganathan shall after he attains majority and if he is of good behaviour (take in his possession) the aforesaid properties after my lifetime and after the lifetime of my wife Lakshmi Achi and enjoy them. (16) In case the aforesaid Ranganathan does not conduct himself properly or if my wife Lakshmi Achi does not like, the following two persons, namely, (1) K. AS. P. Rm. Ramaswami Chettiar, son of Athangudi Palaniappa Chettiar, and (2) PL. T. Rm. Ramasami Chettiar, son of Karaikudi Thenappa Chettiar shall manage my properties after the lifetime of my wife Lakshmi Achi till Ranganathan comes of good behaviour. The amount which may be found just for family expenses shall be paid till such time when the aforesaid Ranganathan begins to conduct himself properly and when the properties are delivered in his possession. (17)..... (18) For the expenses of the maintenance right, etc., of my wife Lakshmi Achi and for the necessary expenses of pilgrimage to sacred places a sum of Rs. 15,000 (fifteen thousand) dollars has been credited in her name in the Saigon firm, and she shall send for and obtain the amount of interest alone got for the said amount every year and spend it according to her pleasure. My adopted son Ranganathan and his male heirs shall take the principal amount. (19)..... (20)As regards the substantial tiled building which belongs to me and which is in my own place and which I am residing, and one bungalow building built by me in the Therodam veedhi (street in which the chariot is drawn) in the said place, my wife shall enjoy them after my lifetime and after her my

adopted son Ranganathan and his male heirs shall permanently and for ever enjoy the said buildings. Apart from enjoying the abovementioned two buildings, none of them shall have any right to alienate them in any manner.

(21)If apart from the matters specified by me herein, it is necessary that any documents should be brought into existence after my lifetime during the lifetime of my wife regarding the properties belonging to me and regarding the charity properties and regarding the family maintenance from time to time I have hereby given authority to my wife Lakshmi Achi mentioned above to execute such documents regarding the same. My adopted son Ranganathan shall perform the funeral obsequies for myself and for my wife. (22 and 23)..... (Sd.) A.L. P.R. Periakaruppan Chetty."

In order to understand the background of this will, it is necessary to recapitulate the previous family history which has already been adverted to at the commencement of this judgment. That is as follows. Periakaruppa adopted Alagappa in or about 1914. He apparently was a spendthrift in his habits and incurred many debts. There developed ill- feeling between them which led to mutual criminal complaints against each other in 1926. One of his creditors obtained a decree and attached the family house. This led to litigation in which Periakaruppa asserted and succeeded in establishing that the super-structure of the family house, which was a costly one, was his own self acquisition. During the pendency of this litigation Periakaruppa adopted for the second time, Ranganatha, claiming to do so by way of custom in the Nattukottai Chetti community. This led to a suit for partition by Alagappa claiming all the properties to be joint properties and for a declaration that the second adoption was in valid. This suit was at a very early stage compromised on the terms that Alagappa and his son were to take away as between themselves a sum of Rs. 1,50,000 in cash and would have no claim of any kind to any of the properties in the possession of Periakaruppa and no claim to interfere in any manner with the various charities and religious endowments which Periakaruppa made The properties were all admitted to be the self-acquisitions of Periakaruppa and his right to alienate the property by will was specifically recognised. Alagappa with his wife and son was to clear out of the family house with all their belongings. Alagappa got his share of the cash under the Rajinama by means of two hundis one for Rs. 25,000 and another for Rs. 50,000. They were specifically delivered over, as recited in one of the terms of, the Rajinama, to one Chockalingam who was made responsible to discharge all the encumbered debts so far incurred by Alagappa, from out of the moneys of those two hundis so as to make sure that no liability would arise out of the debts previously incurred by Alagappa which might affect Periakaruppa. It is in evidence that after this compromise Alagappa and his family consisting of his wife and son cleared out of the original family house built by Periakaruppa and that they were living separate from Periakaruppa. Periakaruppa and his second adopted son Ranganatha were presumably living together in that original family house as stated in the will. This Rajinama was on August 15, 1927, and the will was executed on April 4, 1929, i.e., a year and eight months thereafter. It may be noticed at this stage that the Rajinama while it admits one of the points in controversy in suit, viz., that the property is self-acquired property of Periakaruppan, is silent about the other question at issue, viz., as to the validity of the second adoption and in fact the suit was terminated by a formal dismissal thereof presumably leaving this disputed question at large.

The will starts with an assertion that all the movable and immovable properties in his possession are his self- acquired properties and that excepting himself no other person has any interest or right therein. It asserts that Alagappa conducted himself in immoral ways, fell into bad company, brought into existence several false and colourable documents and borrowed debts to the tune of about a lakh of rupees and caused decrees to be passed in some of them and became inimical towards him. It asserts that Alagappa left his family and was living separately for the past about ten years. Notwithstanding that he was an undisputed adopted son, he referred to him in the will as 'Abhimanaputra' (foster-son). In contrast with this he states that Ramganatha was taken in adoption by him, that Ranganatha was at the time of the will about 17 1/2 years old and that he was liviny with him. Clauses 7 to 14 of the will refer to various religious and charitable endowments which he had made and the properties which he gave to them. It also enumerates the arrangements for their management. By cl. 8 he makes provision for the construction and maintenance of Brahmana Veda Patasala attached to the temple of Sri Sri Theagarajaswami in Thiruvarur. Clauses 8 and 9 set apart certain properties for the due maintenance of the said Patasala. Clause 10 relates to the establishment of three charities in addition to the above Patasala charity, to be conducted and maintained out of the income of the same properties as have been set apart for the Patasala charity. In cl. 11 he states that no person shall have any right to alienate or encumber the properties set apart for the charities. By cl. 12 he appoints his wife Lakshmi Achi as the manager to conduct the above charities after his lifetime. By el. 13 he directs that his adopted son' Ranganatha and his male heirs shall after the lifetime of his wife Lakshmi Achi properly conduct the above-said charities. He appoints three persons as executors to supervise the management by 'Ranganatha'. By cl. 14 he expresses a desire to spend the rest of his lifetime at Thiruvarur and die there. He says that his body shall not be cremated according to custom but that a samadhi (tomb) should be erected for him and that a lamp is to be lit there daily and that a person should be appointed to perform Neivedhiyam daily, of a specified quantity of rice. By the same clause he also enjoins that Guru pooja should be performed once ail year in the star in which he dies by distributing food to the mendicants by spending Rs. 250 every year. He does not specifically indicate who is to perform the Guru pooja. The context may well be taken to indicate that the paid employee was to do it. He indicates that a sum of Rs. 15,000 was set apart for the above purpose in a Saigon firm and that it should be sent for and utilised by his wife for the aforesaid Tirupani. This, in the context, seems to refer to the construction of the Samadhi. He also says that the daily expenses of the samadhi and the Guru pooja expenses should be met from the Patasala charity funds. Thereafter come the various provisions relating to the disposition of the residue of his property. The effect of these provisions in cls. 15 and 16 is that after his lifetime his wife, Lakshmi Achi should enjoy the residue and that thereafter the "adopted son Ranganatha" is to take them into his possession and enjoy them (after the death of himself and his wife) on his attaining majority and if he is of good behaviour. It is specifically provided that if " the aforesaid Ranganatha " does not conduct himself properly or if his wife Lakshmi Achi does not like (him) two specified persons, K.AS.P.Rm. Ramaswamy Chettiar and PL. T. Rm. Ramasami Chettiar should manage the properties after the lifetime of Lakshmi Achi till "Ranganatha" comes of good behaviour and that he should be paid by them just enough for his family expenses -till such time when 'the aforesaid Ranganatha' begins to conduct himself properly and that the properties are to be delivered into his possession then. Under el. 18 the 'adopted son Ranganatha' should take the principal amount of Rs. 15,000 set apart for his wife Lakshmi Achi after her death. There is also el. 20 which provides that the substantial tiled building belonging to him which is in his own place and

in which he was residing and one bungalow built by him in the Therodum Veedhi (Car Street) shall be enjoyed by his wife after his own lifetime and that after her lifetime "his adopted son Ranganatha" and his male heirs shall permanently and for ever enjoy the said buildings. There area few other specific legacies in cls. 17 and 18 which require no notice. The scheme of the will is clear, viz., that Periakaruppa wanted his own wife to enjoy the properties and to manage the charities so long as she was alive and that the adopted son Ranganatha should do the same after her death, that in respect of the charities he set up a committee of supervision over his management (but not in respect of his wife's management) while as respects enjoyment of the properties he specifically provided that the adopted son Ranganatha should enjoy his properties after be attains majority only if he is of good behaviour and that so long as he was not of good behaviour or his wife' did not like him, he was to get only some maintenance out of the properties. These provisions are reminiscent of his past experience with the first adopted son Alagappa and are obviously inspired by the experience of bad conduct and wasteful ways which he thought the first adopted son was guilty of. In the will he refers to "adopted son Ranganatha" in quite a number of places and to "aforesaid Ranganatha " or to " Ranganatha " in some places. There is no doubt that in what may be taken to be the dispositive clause, el. 15, he refers to him as "my adopted son Ranganatha" though in the next connected clause, cl. 16, he refers to him as ,aforesaid Ranganatha " or as " Ranganatha ". The question for consideration is whether the validity of adoption was the condition for the effectiveness of these dispositions. The question as to whether a disposition in such terms is to the person intended therein as a persona designata or by reason of his filling a particular legal status which turns out to be invalid is one of some difficulty and has been considered by the courts in quite a large number of cases, some of which have been cited before us. An elaborate consideration of these various cases cannot finally determine the question that arises in individual cases, which must ultimately depend on its own facts and the terms of the particular document containing the disposition. It is enough to refer to two cases of the Privy Council cited before us, viz., Nidhoomoni Debya v. Saroda Pershad Mookerjee (1) and Fanindra Deb Raikat v. Rajeshwar Das (2). As pointed out in the first case the question in all such cases is whether the gift of the property by the testator to a person who is referred to as having been adopted is one which is dependent on whether all the requisites of a valid adoption have been complied with or whether it is to a designated person notwithstanding that it was desired and expected that the requisites for a valid adoption were complied with. As pointed out by their Lordships in the second case "the distinction between what is description only and what is the reason or motive of a gift or bequest may often be very fine, but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstances". In that case their Lordships gave an illustration which is very apt for the present case. It is as follows:

(1) (1876) L.R. 3 I.A. 253.

(2) (1884) L.R. 12 I.A. 72, 89.

" If a man makes a bequest to his "wife A.B.", believing the person named to be his lawful wife, and he has not been imposed upon by her, and falsely led to believe that he could lawfully marry her, and it afterwards appears that the marriage was not lawful, it may be that the legality of the marriage is not essential to the validity of the gift. Whether the marriage was lawful or not may be considered to make no difference in the intention of the testator." Now in the present case learned counsel for the

res- pondent very strongly relies on the repeated reference to Ranganatha in the will in the dispositive clauses as the adopted son and says that the disposition was made in his favour by reason of the fact that he was adopted and that he was believed to be duly and validly adopted. He points out that Periakaruppa was apparently a religious man as seen from the various charitable and religious endowments he had made in the will itself. He also placed stress on the fact that by virtue of cl. 21 of the will, he directs that his adopted son shall perform the Putra krutyangal (ceremonies to be performed by a son) for-himself and his wife (after their respective deaths). It is said that the performance of the various ceremonies after death by a person who was not a son in the eye of sastras would be abhorrent to any devout Hindu which Periakaruppa clearly appears to be. This contention is not without force. But taking an overall picture of the provisions in the will and the background of the previous history, it is not possible to say in this case that the validity of the adoption was contemplated by Periakaruppa as the condition on which the validity of disposition should depend. As has been previously pointed out the will has been clearly in-spired by his previous experience with his first adopted son Alagappa. When Alagappa did in fact challenge the validity of the second adoption in the suit which he filed and asked for a specific declaration in respect thereof by his plaint, that suit was allowed to be merely dismissed and there was no reference to the validity or otherwise of the second adoption in the Rajinama. Apparently it left the question at large. The will having been executed only within about one year and eight months after the Rajinama in the suit, the testator Periakaruppa must have been conscious of the fact that the second adoption was open to serious challenge. In this context the reference to Ranganatha as the adopted son in the will as against the reference to Alagappa as a mere Abhimanaputra may indicate no more than that testator is anxious to make it quite clear that he would acknowledge Ranganatha as his adopted son in preference to Alagappa and is indicative of his clear intention that he desires him to get his properties to the exclusion of Alagappa and his minor son. That her is desirous of excluding by his will Alagappa and his son is apparent from his very categorical statement in cl. 5 of the will that neither the aforesaid Alagappa nor his heirs shall have any manner of right or interest whatever in the properties which were then in his possession and any properties which may be acquired thereafter. The will itself is, therefore, obviously intended to exclude them from succeeding to his property. Being aware of the likelihood of the challenge as to the validity of adoption of Ranganatha he could not have intended the' disposition to fail in the contingency of the second adoption being held invalid thereby letting in the very persons whom he wanted to exclude. The provisions in the will which give the property to Ranganatha, only if he is of good behaviour seem rather to indicate that he attached greater importance to the character of the boy rather than to his legal status as an adopted son. It is true that he contemplated ceremonies to himself and his wife after their death being performed by the adopted son Ranganatha. But it is noteworthy that he chose the course of having his body enshrined in a tomb after his death and making arrangements for worship being conducted every day and Guru pooja on the day of his own annual sradh day. This may well have been felt by him to be a substitute for the regular annual sradh by an undisputedly valid adopted son whom he did not like. It is also noteworthy that there is no indication that he contemplated the Guru pooja as having to be done by Ranganatha, after the death of his wife. How exactly the testator viewed the second adoption of Ranganatha and the alleged custom enabling him there unto may well be gathered from para. 8 of his written statement in O. S. 114 of 1926 which is as follows:

"The allegations in paragraph 11 of the plaint are false. This defendant has really taken in adoption the 2nd defendant. The aforesaid adoption is valid in accordance with the custom of Nattukottai Chettiars. There are many differences in the matter of adoption between Nattukottai Chettiars and other caste people as stated below. Their custom alone can prevail in the matter of the adoption taken by them and neither the law nor the Sastras can bind them. As adoption is made among Nattukottai Chettiars only with the intention that the adopted son should render them help and assistance (1) those who make adoption pay money to the parents Vagaira as price for the adopted boy. (2) Neither Dattaka Chandrika or Dattaka Mimamsa can bind them. (3) If one person has two wives, the two wives adopt two sons. (4) If the son of a person dies leaving his widow, the father takes a boy in adoption for himself, and the widowed daughter-inlaw takes another boy in adoption. (5) If a grandson by son is born to one person and the son dies, the aforesaid person takes a boy in adoption even when the aforesaid grand-son is living. The customs with regard to adoption among Nattukottai Chettiars are in existence as stated above. (6) As the aforesaid Chettiars are traders, a person can take in adoption another boy, if the adopted son acts against the will of the adoptive father without improving the property."

This seems to indicate that in his view such a customary adoption was made for temporal rather than for spiritual reasons. Taking an overall picture of the various provisions in the will, it appears to be reasonably clear that Ranganatha notwithstanding his description as adopted son in the will in several places, was intended by the testator to take the property as persona designata and that the will was therefore effective to convey title to him to residue of properties left by Periakaruppa after his death, No question has been raised that the condition in the will that Ranganatha is to take the property only if he is of good conduct and behaviour, has operated to prevent the title vesting in him and it may be doubtful whether if a clear intention of the testator can be gathered from the will, to bequeath the residue to Ranganatha as persona designata the condition of good conduct and behaviour would be valid to prevent the vesting of the title. We have, therefore, come to a clear conclusion that Ranganatha obtained title to the properties of Periakaruppa under the will. This is in accord with the conduct of Alagappa for over 14 years after the death of Periakaruppa and his wife, in keeping silent and allowing Ranganatha to enjoy the. properties without laying any claim to the property on the ground of the invalidity of the will and the invalidity of the adoption, thereby indicating how he understood the will. In this view the other questions raised in this appeal do not call for consideration. This appeal, i.e., Civil Appeal No. 169 of 1956, is accordingly allowed with costs throughout and the plaintiff's suit dismissed.

The questions that arise for decision in the trust appeal may now be taken up for consideration. The plaintiff in the trust suit also is junior Periakaruppa. There were five defendants in the suit. First and second defendants are Ranganatha and his minor son. The third defendant is the son of Chockalingam. The fourth and fifth defendants are the father, Alagappa and Muthayi Achi, mother of junior Periakaruppa. The plaintiff's case as set out in the plaint is that by the terms of the compromise in O.S. No. 114 of 1926 on the file of the Subordinate Judge of Devakottai " Periakaruppa and Chockalingam were constituted joint trustees for himself who was then a minor and that they were enjoined the duty of having the amount invested from time to time in Cheyenne firms, that the above terms were accepted by all the parties concerned including Periakaruppa and that consequently both Periakaruppa and Chockalingam accepted the position of joint trustees for

the plaintiff for duly safeguarding and improving his moneys." He alleges that the "said trustees were, therefore, bound to see to the proper investment of the said moneys in reliable and sound Chetti firms and for their accumulation with accrued interest during the plaintiff's minority and to pay the *accumulation to the plaintiff on his demand on his attaining majority." He says further in the plaint that he learned after attaining majority that the entire amount was appropriated by Chockalingam for discharging his own personal debts and that he made it appear as if he had credited the trust amount in his own firm, that eventually when his firm became involved (financially) he (Chockalingam) appears to have executed of his own accord a simple mortgage dated May 3, 1930, (i.e., during the minority of junior Periakaruppa) of his house at Athangudi (in South India) together with a small item of property in Burma in favour of the plaintiff and another creditor for a sum of Rs. 1,00,000 of which Rs. 70,000 was intended to be the plaintiff's money and the other Rs. 30,000 of the other creditor. The plaintiff further says in his plaint that the house which was the main item of security in the mortgage had no marketable value, that the mortgage was a one-sided affair and that he repudiates the same. He claims accordingly that both the trustees Periakaruppa and Chockalingam were bound to render to him an account of the trust amount and if they had not properly invested it they were bound to repay it to the plaintiff with interest. He alleges that the trustees were bound to invest the amount in securities authorised by law and that they were bound to invest the moneys in sound third party Chetti firms. He also alleges that Periakaruppa knew at the time the involved circumstances of his co-trustee and either colluded with him or failed in his duty to protect the plaintiff's interests. He accordingly claims that Peria- karuppa jointly with Chockalingam were liable for the gross breach of trust in respect of the said amount. He further alleged that on the, death of Periakaruppa on July 14,1929, and of Chookalingam in September/ October, 1934, he the plaintiff was entitled to recover the amount due to him from the estate of Periakaruppa in the hands of defendant No. I and of Chockalingam in the hands of defendant No. 3.

The first defendant filed, along with his minor son the second defendant, an elaborate written statement the substance, of which was that Periakaruppa was not constituted a trustee nor did he accept or assume the position of or acted as a trustee for the plaintiff in respect of the sums mentioned in the plaint. He states that, on the other hand, the only persons who were competent to act on behalf of the plaintiff were his guardians or his parents and the Rajinama conferred no right on Periakaruppa to override any acts done by play Dtiff's legal guardians on behalf of the plaintiff's moneys. It is further stated that there was nothing improper on the part of Chockalingam along with the plaintiff's father and mother in realising the ,same under the hundi (for Rs. 75,000 due to junior Periakaruppa) and handing it over to Rangoon A.P.S. Firm (Chockalingam's firm) for being invested. He further states that the said firm was in a flourishing and solvent condition then and during all the time Periakaruppa was alive, and that there was absolutely no negligence or improper motive on the part of any body in entrusting to the said firm for investment or in investing in the said firm, the money realised for the said hundi drawn by Periakaruppa. It was further stated that the first defendant therein understood that out of the said moneys with Chockalingam's firm a sum of Rs. 30,000 was withdrawn by the parents and guardians of the plaintiff and invested the same bona fide in the purchase of a house for the benefit of the plaintiff on July 23,1928, which was proved to be in the possession of the plaintiff and continued to be so and that the plaintiff must be taken to have ratified the said purchase. The written statement also states that in or about the year 1930 after the death of Periakaruppa there were some disturbances in Burma and that the parents

and guardians of the plaintiff, with a view to safeguard the interests ,of the plaintiff completely and effectively, wanted from the said Chockalingam security of landed property and thus obtained the mortgage referred to in the plaint of his residential house and bungalow at Athangudi and of the business premises of Chockalingam at Bogale in Burma. The written statement proceeds to say that the plaintiff is bound by the acts of his parents and guardians in entering into such an arrangement made in his interest and for his benefit. It is also further stated that on February 17, 1936, the house and bungalow of Cbockalingam at Athangudi which was the subject matter of the mortgage above mentioned, were purchased in court auction by Alagappa the father of junior Periakaruppa for a small sum of Rs. 1,000 subject to the mortgage and that this course was adopted as a means of realising the amount due to the plaintiff on the mortgage deed without the necessity to incur any costs of a suit. It is thus claimed that the mortgage as well as the subsequent purchase of equity of redemption were all transactions by Alagappa for the benefit of his minor son and acting for him and that the plaintiff is not entitled to repudiate these transactions. The third defendant, son of Chockalingam, also filed a written statement denying that there was any trusteeship or acceptance thereof by his father, that the relations between the minor represented by his mother and father on one side, and Chockalingam on the other side, with whom the moneys were kept was solely one of creditor and debtor and that the minor's money was properly invested with Chockalingam and that by then he was in a flourishing condition, that the hypothecation of May 3, 1930, was more than sufficient to cover the debt due and that the Properties covered by the mortgage were brought to sale in court auction subject to the mortgage and were purchased by the plaintiff's father acting in his interest, that one of the properties so purchased has been resold and the sale proceeds realised by the plaintiff, that the other property is still in possession and enjoyment of the plaintiff and that therefore there was no loan outstanding. He further says that the remedy, if any, of the plaintiff was against his father and mother and not against himself.

The suit was decreed in the trial court by ordering defendants 1 to 3 to pay a sum of Rs. 1,39,672-13-6 with interest from out of the assets of Periakaruppa and Chockalingam in their hands. Now, it does not appear that the third defendant appealed against this decree either to the High Court or to this Court. His liability under that decree is not, therefore, in any way affected by the subsequent proceedings on appeal to the High Court and this Court and it is unnecessary to refer to him or his liability in what follows.

The contention of the plaintiff's counsel that Periakaruppa and Chockalingam constituted joint trustees for the sum of Rs. 75,000 payable to him under the compromise dated August 15, 1927, is one that is founded on the terms of the compromise. It is necessary therefore to set out the relevant terms thereof.

"1.As settled by the four Panchayatdars, viz (1)N. AR. Arunachalam Chettiar of A. Muthupattanam, (2) SP. AR. S. Chidambaram Chettiar of Athangudi, (3) M.T.A.M. Muthiah Chettiar of Kottaiyur, and (4) RM. AL. Alagappa Chettiar of A. Muthupattanam directing the first defendant to pay to the plaintiffs separately in respect of the right claimed by the plaintiffs in the suit filed by the plaintiffs herein for partition on the ground that they are also entitled to a share in the properties mentioned in the plaint in this suit, the first defendant has executed 3 hundis mentioned hereunder and issued on the 29th Ani, Prabhava (13th July 1927) in the names of the plaintiffs for Rs. 1,50,000, i.e., Rs.

75,000 to the first plaintiff and 75,000 to the second plaintiff with instructions to separately pay to the aforesaid plaintiffs and accordingly the plaintiffs have, at any time hereafter, no right and future connection whatever either in the properties mentioned in the plaint in this suit, or in any other property in the possession of the first defendant, or in any property that the first defendant shall hereafter acquire. The first defendant alone shall, as he pleases, enjoy as usual the aforesaid entire properties, as hisself-acquired properties with all Swatantrani and right and powers of alienation such as gift, exchange, sale, etc. The first defendant has the right also to alienate the aforesaid entire properties either by a will or otherwise.

2. The first defendant shall for the hundis Nos. 1 and 2 out of the 3 hundis for Rs. 1,50,000 mentioned in paragraph I herein, pay the principal of Rs. 75,000 and interest within Purattasi of this Prabhava year (16th October 1927). The principal of Rs. 75,000 under the remaining hundi No. 3 shall be paid within the 30th Panguni of the year Prabhava (11th April 1928).

3. The Sridhanam amount of Rs. 14,000 of Muthayi Achi., mother of the second plaintiff, and the second plaintiff's amount of Rs. 75,000 out of the aforesaid amount of Rs. 1,50,000 under the hundis, shall be invested in Chetti houses in the name of the second plaintiff to the order of Periakaruppan Chettiar, the first defendant, and to the order of A.P.S. Chockalingam Chettiar of Athangudi, the junior paternal uncle of the aforesaid Muthayi Achi, and the aforesaid two persons shall be in management. The signature letters and accounts pertaining to the aforesaid amounts shall be with the aforesaid Chockalingam Chettiar. 4 to 9.....

10. As A.P.S. Chockalingam Chettiar is liable for the discharge of the encumbrances that have been created by the first plaintiff as mentioned in paragraph 4 herein, the first plaintiff Alagappa Chettiar has endorsed on the undermentioned first and second hundis that they are payable to the order of the aforesaid Chockalingam Chettiar and they have been delivered to the aforesaid Chockalingam Chettiar. It is therefore prayed that the Court may be pleased to record the razinamah in the suit and to dismiss this suit.Details of the hundis.

1. The hundi for Rs. 50,000 issued on the 29th Ani of the year Prabhava (13th-July, 1927) directing Rangoon Thamappan PL. T. RM. Karuppan Chettiar to pay money with Rangoon nadappu interest.

2. The hundi for Rs. 25,000 issued on the 29th Ani of the year Prabhava (13th July, 1927) directing Rangoon M. A. M. S. Meiyappa Chettiar to pay money with Rangoon nadappu interest,

3. Hundi for Rs. 75,000 issued on the 29th Ani of the year Prabhava (13th July, 1927) directing Rangoon RM. P. A. Muthiah Chettiar to pay money with Rangoon nadappu interest."

The whole argument for the plaintiff is based on the provision contained in para 3 that the Sridhanam amount of Rs. 14,000 of Muthayi Achi, mother of the second plaintiff (which, it is said, has been given up by the plaintiff's mother in his favour) and the second plaintiff's amount of Rs. 75,000 out of Rs. 1,50,000 under the hundis, shall be invested in Chetti houses in the name of the second plaintiff to the order of Periakaruppa Chettiar and to the order of A. P. S. Chockalingam Chettiar of Athangudi. This provision-it is contended, shows that the money under the hundi meant

for the minor was to be invested, by Peria- karuppa and Chockalingam in Chetti houses in the name of the plaintiff but to their order. It is said that the amount so invested was, therefore, payable to themselves or to their order and that they were charged with the duty of seeing that the money was properly invested by operating on the minor's deposit in their joint names and changing the investments when found necessary. It is urged that, therefore, both of them were constituted thereby as the legal owners of the amount, the beneficial ownership remaining with the minor and that to this legal ownership was attached the obligation of seeing to the proper investment of the money and the augmentation of fund by the addition of substantial interest obtainable from reliable Chetti firms. In order to determine whether this contention is correct, it is necessary to notice the terms of the relevant hundi of the same date as the Rajinama. This and other hundis issued by reason of the Rajinama must be taken to be part of the Rajinama inasmuch as they were referred to therein by description under the heading "Details of the hundis". Learned counsel for the respondent, junior Periakaruppa, urges that for this purpose it is the Rajinama alone that has to be looked into but not the terms of the hundi. We are unable to agree with this contention. We have no doubt that the Rajinama and the hundis are integrally one and must be read together. The hundi dated August 15, 1927, for Rs. 75,000 issued by Periakaruppa for the benefit of junior Periakaruppa as part of the Rajinama is as follows:

"Credit to minor Periakaruppa Chetti, son of AL. PR. Alagappa Chetti of A. Muthupattanam--Debit to AL. PR. Periakaruppan Chettiar.

Out of the sum of Rs. 1,50,000 payable by me according to the razinamah entered into in 0. S. No. 114 of 1926 of the file of the Sub-Court, Devakotta, on the 29th Ani of this year (13th July, 1927)..... the amount towards your share for improving the same by making investments in Chetti firms for interest in your name and to my order and to the order of Athangudi A. P. S. Chockalingam Chettiar, is Rs. 75,000. Rangoon RM. P. A. Muthiah Chetti shall, on demand, pay money for this sum of Rs. 75,000 together with Rangoon nadappu interest from the 29th Ani of this year (13th July, 1927) to the order of the three viz., (1) AL. PR. Alagappa Chetti, (2) Muthayi Achi, mother and guardian of minor Periakaruppan Chetti, son of the aforesaid person, and (3) A. P. S. Chockalingam Chettiar of Athangudi, and debit it in my account with endorsement of payment made herein.

Sd. AL. PR. Periakaruppan Chettiar."

Now taking para 3 of the Rajinama and this hundi together, it is clear that the banker of Periakaruppa one RM. P.A. Muthiah Chetti of Rangoon was to pay this amount to the order of the three persons, Alagappa, Muthayi Achi, and Chockalingam and that the said amount was to be invested in the name of the minor in Chetti firms to the order of Periakaruppa and Chockalingam. Now it is the contention of the learned counsel for junior Periakaruppa that the word 'order' used in both these places has the same meaning as in the Negotiable Instruments Act, 1881, (XX VI of 188 1) and that therefore what is contemplated is that the money under the hundi was in the first instance payable by Muthiah Chetti on whom it was drawn on the joint signatures of all the three persons named in the hundi i.e., Alagappa, Muthayi Achi and Chockalingam and that what is further contemplated is the investment of that money by Periakaruppa and Chockalingam in Chetti firms in

the name of junior Periakaruppa to the joint order of both of them. On this view, it is said that both these persons have the power to draw the money so invested whenever they choose and have the control of the money and in that sense have the legal ownership of the money vested in themselves notwithstanding that the amount is invested in the name of the minor to indicate his beneficiary ownership. Learned counsel for the appellant Ranganatha contends that this is not the proper interpretation of the word ' order' as used in reference to the joint names of Periakaruppa and Chockalingam. He refers us to certain cases of the Madras High Court which recognised the practice of Chetti firms receiving deposits in the name of a particular person to the maral of certain other person or persons and that the idea of maral is merely to indicate that the change of investment was to be made with the consent of the maraldar without in any way affecting the ownership of the person in whose name the money is deposited. According to the cases on which he relies, the maraldar has no right to operate on the account and withdraw the money. It has been pointed out to us on the other side that the material word used in this context both in para 3 of the Rajinama and in the hundi itself is " order' and not maral '. It is also urged that the word maral has acquired no such settled meaning, as the appellant ascribes to it. There are decisions showing that the question as to what the word maral means is one that must depend on the proof in each particular case of usage of that word by the Nattukottai Chetti firms. This has been laid down by the Privy Council in Arunachalam v. Vairavan (1) and in Muthuraman v. Periannan (2). In view of these decisions and the fact to which our attention has been drawn that there is no pleading in this case as to the meaning of the word 'maral' or that the word 'order' in the context of this case has been used in the sense (1) A.I.R. 1929 P.C. 254, 256. (2) A.I.R, 1934 Mad. 621,

622. of maral, we are not prepared to uphold the contention that the word ' order' in this case can be given the meaning which is attributed to the word 'maral' in some of the cases which have been cited to us for the appellant. It does not, however, follow that the word ' order' in this case in its application to the two persons Periakaruppa and Chockalingam, is used in the sense which it has under the Negotiable Instruments,Act. Learned counsel for the respondent, junior Periakaruppa, relies on s. 13(1), Explanation (iii), taken with ss. 8, 9, and 78 of the Negotiable Instruments Act. He urges that in the case of a negotiable instrument the person who is indicated as the ' orderer ' (if that word may be used in this context) is the holder thereof and is the person who is entitled to receive the amount thereunder and to give a discharge in respect thereof and that, therefore, he is virtually the legal owner thereof. If, as held in Krishnashet bin Ganshet Shetye v. Hari Valjibhatye (1), the Negotiable Instruments Act, (in the absence of any local usage to the contrary) applies to hundis, what is urged above may well be applicable to the money of the original hundi for Rs. 75,000 drawn on Muthiah Chetti and specifically payable on demand to the order of the three persons, Alagappa, Muthayi Achi and Chockalingam. But the position as regards the amount so collected, and thereafter invested in the name of junior Periakaruppa, is not necessarily the same. It is true that para 3 of the Rajinama and the narration in the relevant hundi clearly show that the amount of the hundi (apparently after realisation thereof) is to be invested in Chetti firms in the name of minor Periakaruppa and that such investment is to be to the order of both Periakaruppa and Chockalingam. This is obviously nothing more than a deposit in the name of the minor after such collection. The investment would presumably be covered by an ordinary deposit receipt in the name of the minor. A deposit receipt of that kind does not fall within the definition of 'negotiable instrument' under s. 13 of the Negotiable Instruments Act. There is no authority for showing that

such a deposit receipt is a# (1) (1895) I.L.R. 20 Bom. 488.

document to which the notions of Negotiable Instruments Act as to the use of the word order' and the legal implications thereof would be applicable. On the other hand there appears to, be authority to the contrary. See Sethna v. Hemmingway(1) and In re Travancore National and Quilon Bank Ltd.(1). Both these cases indicate that a deposit receipt is not a negotiable instrument. It is true that in the language of the hundi, at both places, i.e., (1) where the hundi is to be cashed, and (2) at the place where the cash so collected is to be invested, the same word 'order' is used with reference to different sets of persons. It is, therefore, suggested that they have to be understood in the same sense. But the hundi, though intended for the minor and credited to him, is not drawn specifically in favour of the, minor but only to the order of certain named individuals, while the investment is to be made specifically in the name of the minor indicating that he is the owner thereof. It would be begging the question to say that the orderdars in this context are the legal owners and that hence this indicates only his beneficial ownership. It appears to us reasonably clear that merely because para 3 of the Rajinama and the narration in the relevant hundi both contemplate the amount of hundi on realisation to be invested in Chetti firms in the name of the minor to the order of both Periakaruppa and Chockalinga, it does not ipso facto follow as a matter of law that both of them are authorised to operate on it in the sense that they can withdraw the money and have the control of it in the same way as a person, to whose. order a bill of exchange or a cheque is payable, can have. While it is true that the appellant Ranganatha has not made out that the word 'order' is used in the ,sense of the word 'maral' and has not pleaded or proved what maral or order in this case means, the plaintiff has not equally made out that the word 'order' in para 3 of the Rajinama in its application to Periakaruppa and Chockalingam in the context, authorises them to obtain absolute control of the money deposited. But it is urged that this is implicit (1) A.I.R. 1914 BOM. 286, 287.

(2) A.I.R. 1940 Mad. 157, 159.

in the language of para 3 which refers to investment and management. Undoubtedly under the terms of the Rajinama the amount is to be invested in Chetti firms in the name of the second plaintiff and the two persons, Periakaruppa and Chockalingam, are to be associated with the investment, by its being designated as being to their order, whatever that may mean, and they are also enjoined and associated with it in the following terms.

" Iruvarghalum mel parthu varavendiyadu This clause which is in Tamil language has been translated in the official translation as " the aforesaid two persons shall be in management." Two out of us in this Bench who have a fairly working acquaintance with Tamil language are not satisfied that ' management is a correct translation for the word 'mel parthu '. What the clause contemplates is ' mel parve ' which literally means 'over-seeing'. It conveys the idea of ,;supervision' and does not imply the capacity to operate on the deposit. But it is suggested that the relevant clause taken as a whole indicates that both together have the power of investment and reinvestment as indicated by the use of the phrase in Tamil, viz., 'koduthu vangi', which means 'giving and taking', i.e., 'lending and taking back.' This phrase is generally used to indicate 'investing.' But it is not very clear in the structure of the sentence in which this phrase occurs that it is the two persons Periakaruppa and Chockalingam that are to do this 'investing.' The word 'iruvarkalum' in this sentence follows

'koduthu vangi' and precedes 'mel parthu varavendiyathu` and indicates rather that their joint responsibility relates to only 'mel parvai' and not 'koduthu vangal'. In a matter like this, however, relating not merely to the meaning of a particular word such as ' mel parthu' as above but to the contextual meaning of an entire clause in which a particular phrase like 'koduthu vangi' is used, we do not wish to base the decision on our own impression as to the implication of that phrase in the context and would prefer to go by the official English translation which is as follows;

"The amount..... shall be invested in Chetti houses in the name of the second plaintiff, to the order of Periakaruppan Chettiar, the first defendant, and to the order of A.P.S. Chockalingam Chettiar of Athangudi, the junior paternal uncle of the aforesaid Muthayi Achi, and the aforesaid two persons shall be in management." But even this does not indicate that the power of investment is vested in them but only 'mel parve' which, in our view, has been wrongly translated as 'management.' Taking the whole of this clause carefully we are not satisfied that the language clearly indicates that the power of operating in respect of the deposit by way of withdrawing the amount and being in control thereof is vested in Periakaruppa and Chockalingam. All that the language indicates with certainty is that these two persons are specially enjoined to supervise the investments and that they are "orderdars," whose meaning has not been made out. In such an ambiguous situation as to the, meaning of the words used and the intention of the parties thereto, it is permissible to look into and consider what the contemporaneous actings of the parties are which may be treated as virtually part of the same transaction.

The hundi for Rs. 75,000 for the benefit of junior Periakaruppa dated August 15, 1927, was, according to para 2 of the Rajinama, payable by April 11, 1928. There is an endorsement on the hundi signed by Alagappa, Muthayi Achi and Chockalingam dated May 31, 1928, to the effect that the money due under that hundi is to be paid to Rangoon A. P. S. Firm (which means Chockalingam's firm) together with interest thereon. On the terms of the hundi the interest was payable from July 13, 1927, on which date the Panchayatdars appear to have settled the terms of the Rajinama. This shows that the amount was actually drawn on the signatures of the three persons and was intended to be collected by Chockalingam's firm at Rangoon. The hundi also bears a note signed by Chockalingara's agent, A. P. S. Somasundaram, that the principal and interest of the hundi amounting to Rs. 80,726-15-3 was received through another banker named KM. CN. Somasundaram Chetti as per letter of Periakaruppa to KM. CN. Somasundaram Chetti on April 10, 1928. It is in the evidence of this A. P. S. Somasundaram, clerk of Chockalingam, who was examined as P.W. 2 on commission, that after its withdrawal the money was in fact credited on or about June 19, 1928, in the accounts of A. P. S. Firm at Rangoon in the name of junior Periakaruppa, to the order of (senior) Periakaruppa and Chocklingam under the directions of Chockalingam. It is the evidence of this Somasundaram that Chockalingam directed him to invest the amount in Rs. 4,000 or Rs. 5,000 in reliable and sound Chetti firms, presumably meaning thereby that the idea was to keep the money in the A.P.S. Firm provisionally until he was able to invest the money safely by distributing it over several reliable Chetti firms in comparatively small sums. That this was the real intention of everybody concerned in entrusting the money to the A.P.S. Firm is confirmed by what is narrated in Ex. P-4, a receipt issued in favour of Periakaruppa, for the total sum of Rs. 75,000 collected in respect of the two hundies for the amounts of Rs. 50,000 and Rs. 25,000 respectively, belonging to Alagappa under the compromise. That receipt shows the collection of a sum of Rs.

76,274-1-9 being the principal and interest of the two hundies, and recites also some other matters. It ends with the following significant narration :

"We shall obtain money for the hundi for Rs. 75,000 of minor Periakaruppan Chettiar and for the hundi for Rs. 14,000 credit it in the firm of Rangoon A.P.S. invest it in our Nattukottai Chetti firms for thavani to the order of (1) AL. PR. Periakaruppan Chetti of A. Muthupattanam, and (2) A.P.S. Chockalingam Chetti of Athangudi, and deliver the copy of the aforesaid debit and credit account, and copies of the signature letters."

This is signed by A.P.S. Chockalingam Chettiar as the power agent of AL. PR. AL. Alagappa Chettiar and also by Muthayi Achi for herself and for minor Periakaruppan Chetti. This narration in the receipt indicates quite clearly that it was the father and the mother of the junior Periakaruppa that took the responsibility of authorising the A.P.S. firm to collect the hundi amount and of investing it in other Nattukottai Chetti firms for thavanai. The intention clearly appears to be that it is Chockalingam that was to collect the money on the hundi and it was Chockalingam that was to arrange for the investment of the same (on the legal responsibility of Alagappa and Muthayi Achi, the natural guardians of the minor). This is exactly what is borne out as to what happened thereafter as appears from the evidence of Chocka- lingam's clerk, Somasundaram, P. W. 2. This seems really to indicate that what the parties throughout intended was that while-the collection of the money under the hundi was to be under the signature of all the three, viz., Alagappa, Muthayi Achi and Chockalingam, the agency actually to collect was to be the firm of Chockalingam in Rangoon and it is that firm that was to arrange for distributing the money over various other Nattukottai Chetti firms by way of safe and good investments on the implied authority of the natural guardians, viz., the father and mother. This obviously would take some time and during this time Chockalingam's firm would naturally have to be in charge of the funds. It appears reasonably clear, however, that a long term investment in Chockalingam's firm as such was not contemplated. This may be inferred from the wording in para 3 of the Rajinama which says that "the signature letters and accounts pertaining to the aforesaid amount shall be with the aforesaid Chockalingam Chettiar. In the context this obviously means that the deposit receipt and the periodical accounts relating to that deposit by way of addition of interest and so forth were to be in the custody of Chockalingam. Thus Chockalingam was the person primarily intended to collect the money and to be in charge of the investment, that pending final investment Chockalingam was to have temporary custody of the amount. The point to be noted about this subsequent conduct of the persons concerned is that in respect of these various matters Periakaruppa does not at all come into the picture. The narration in the receipt, Ex. P-4, which recites under the two signatures thereto, of Chockalingam as agent of Alagappa and Muthayi Achi as guardian, is that they undertake to obtain the money and invest it in Nattukottai Chetti firms for thavanai. It does not indicate that it will be so invested on the instructions or consent also of Periakaruppa. Nor does Somasundaram, P.W. 2, in his evidence give any indication that the collection by and investment in, Chockalingam's firm was actually done under the instructions of Periakaruppa or that it was thereafter contemplated that in splitting the amount into smaller sums, it would have to be under instructions of Periakaruppa also. There is no evidence that Chockalingam sent his instructions to his clerk Somasundaram with the knowledge and consent of Periakaruppa or in collaboration with him. It is also significant that the only further act of reinvestment which was made during Periakaruppa's lifetime, viz., the purchase of a house for

Rs. 30,000 at Athangudi in the name of junior Periakaruppa and of which the minor is admittedly enjoying the benefit, does not. appear to have been with the knowledge or consent of Periakaruppa. Thus looking at the actings of the parties concerned, there is nothing to show that the parties understood the term in para 3 of the Rajinama as laying on Periakaruppa the responsibility of actually making investments and reinvestment for that purpose to operate and withdraw the amounts from the banker or bankers with whom the hundi money after collection was to be invested.

Learned Judges of the High Court were greatly influenced by the assumption that it could not have been the intention of Periakaruppa to allow a spendthrift like Alagappa to handle the funds of the minor for purposes of investment or change of investment, and that therefore it must have been intended that both the persons Periakaruppa and Chockalingam were to have that power and that this was what was meant by directing that the minor's money must be invested " to the order of Periakaruppa and Chockalingam ". It is true that the handling of the minor's funds by his father Alagappa alone was not likely to have been contemplated. But that does not necessarily mean that Periakaruppa took upon himself the responsibility for such handling either by himself or jointly with Chockalingam. On the other hand it looks as though that it was Chockalingam that took such responsibility. Though not himself a panchayatdar he must have helped to bring about the compromise on the side of Alagappa, Muthayi Achi and junior Periakaruppa. This is indicated by his having signed the Rajinama as a witness thereto. The entire set- up of the Rajinama and the subsequent actings show that all the parties concerned including Periakaruppa himself had confidence in Chockalingam who was no other than the paternal uncle of Muthayi Achi, the mother of the minor. In fact even as regards the sum of Rs. 75,000/payable to Alagappa himself under the two hundies it was Chockalingam alone that was constituted virtually the trustee for collecting the said hundi amounts and paying thereout the debts which had by then been incurred by Alagappa. This is clear from the fact appearing in paras 4 and 10 of the Rajinama. Para 10 says that the plaintiff Alagappa has endorsed on the two hundies belonging to him that they are payable to the order of Chockalingam and it further recites that the hundies have been delivered to the aforesaid Chockalingam. It is specifically stated in that para that Chockalingam was liable for the discharge of encumbrances that have been created by the first plaintiff therein (Alagappa). This was reiteration of what was stated in para 4 which says that whatever be the encumbrances created by the first plaintiff in respect of any property mentioned in the plaint in the suit, the aforesaid Chockalingam shall discharge them without any liability whatever to the first defendant. It is clear that Periakaruppa was willing to trust Chocklingam completely even in respect of a matter which would directly affect him, viz., the discharge of Alagappa's debts incurred by way of encumbrances, so as to relieve him from all liabilities for such debts. It is unreasonable, therefore, to assume that he was not prepared to leave the responsibility for the collection and investment of the minor's funds also with Chockalingam but that he undertook a joint responsibility with him in respect of the same. Undoubtedly para 3 of the Rajinama indicates that the amount was to be deposited to the order of Periakaruppa as also Chockalingam and that both together are to have 'mel parve' (supervision). But whatever may be the connotation of this provision, it does not appear to us, with great respect to the learned Judges of the High Court, reasonable to attribute to Periakaruppa the undertaking of the responsibility of a trustee on its basis. Trusteeship is a position which is to be imputed to a person on clear and conclusive evidence of transfer of ownership and of the liability attached to such

ownership on account of confidence reposed, and on such liability having been accepted by the alleged trustee. There is no clear and conclusive proof of any of these elements in the present case so far as Periakaruppa is concerned.

Learned counsel for the respondent has also relied upon a statement in the affidavit of Muthayi Achi,mother of junior Periakaruppa dated August 6, 1927, in respect of the application for compromise the litigation on behalf of the minor in which it is stated as follows:

" The first defendant (meaning Periakaruppa) has given a hundi for Rs. 75,000 to my junior paternal uncle A. P. S. Chockalingam Chettiar on behalf of the minor 2nd plaintiff in accordance with the award of the Panchayatdars. It has been settled that the aforesaid amount of Rs. 75,000 should be deposited in Chetti firms in the name of the aforesaid minor, to the order of the 1st defendant and the aforesaid A. P. S. Chockalingam Chettiar and improved." It is urged that when the hundi itself has been handed over to Chockalingam, as this affidavit indicates, the very property belonging to the minor must be taken to have been delivered over to Chockalingam as one of the two persons in whose order the money was to be deposited and that this, in law, amounts to transfer of ownership to one, on behalf of both, with the obligation attached and that the acceptance thereof must be assumed in view of the fact that the whole of the Rajinama including this term was agreed to by Periakaruppa along with the others. It is quite clear, however, in this case that the mere delivery of the hundi to Chockalingam cannot be treated as itself transfer of ownership of the money which was to be collected in respect thereof. Paras 1 and 2 of the Rajinama itself are in substance as follows: " That the Panchayadars directed the first defendant (Periakaruppa) to pay to the plaintiffs a total of 1,50,000, and that the first defendant accordingly executed three hundies in the names of the plaintiffs." Thus by virtue of the direction to pay, the compromise brought about between Periakaruppa on one side and Alagappa and junior Periakaruppa on the other the relationship of debtor and creditor. It is obvious that until the hundies are realised that relation would continue. There is no transfer of ownership till then. (See In re Beaumont, Beaumont v. Ewbank(1). Further, as has already been noticed, the hundi issued by Periakaruppa in respect of junior Periakaruppa's share of Rs. 75,000 was originally issued upon Muthiah Chettiar of Burma but was ultimately realised through one KM. CN. Somasundaram Chetti on a letter written by Periakaruppa to him. This indicates that for some reason or other the hundi could not be cashed on the original banker and had to be realised through another banker. In this state of facts it is not feasible to say that the mere handing over to Chockalingam of the original hundi drawn on Muthiah Chettiar on the date of the compromise itself (as mentioned in the affidavit of Muthayi Achi) can be treated as transfer to Chockalingam of the very property of junior Periakaruppa under the Rajinama. The trust, therefore, if any, in respect of that amount must attach only after realisation of the amount and by reason of the acting of the parties subsequent thereto implying acceptance of the obligations under the trust. The more fact that Periakaruppa agreed to all the terms of the Rajinama does not constitute such acceptance. It is at best only indication of a prospective willingness to accept. As already stated there is absolutely no evidence of an (1) [1902] 1 Ch. 889.

actual acceptance after the hundi was cashed and the amount was in fact treated by Chockalingam as an investment in his firm. Indeed even if it be assumed that Periakaruppa became a joint trustee with Chockalingam in respect of the amount belonging to the minor it does not follow that

Periakaruppa was responsible for the breach of trust in this case, committed obviously by Chockalingam only. As already stated' it appears quite clearly that collection by Chocka- lingam of the minor's hundi and his keeping custody thereof in his own firm until the amount is regularly invested in other Chetti firms was a matter which was under the initial contemplation of everybody concerned and in particular of the father and the mother who are his natural guardians. That this was the position as late as July, 1928, is quite clear from the evidence of Chockalingam's clerk, Somasundaram, P. W. 2. Periakaruppa died in July, 1929, about an year later. There is absolutely nothing to indicate that 'the provisional retention of the amount in Chockalingam's firm for that period, was unreasonable or that Periakaruppa had any notion that Chockalingam was financially in embarrassed circumstances and that he made use of the funds. It is true that, under law, the investment of funds by a trustee with himself would constitute breach of trust. But before a co-trustee can be made liable therefor some kind of knowledge or connivance or gross negligence or the like contributing factor on his part has got to be made out.

It may be that in this case the minor's funds have been frittered away by the embarrassed circumstances of Chockalingam in whom everybody seems to have reposed confidence. If that was in fact what happened, it may be unfortunate for the minor. But that cannot be any reason for affecting Periakaruppa or his estate with the liability for Chockalingam's breach on an assumed construction of what appears at best to be equivocal and ambiguous language in the Rajinama. The burden is on the plaintiff, junior Periakaruppa, to make out clearly that by the Rajinama Periakaruppa became a trustee for the minor's fund and incurred liability therefor for his co-trustee's breach. At the time of the compromise the minor was less than two years in age. Periakaruppa was more anxious to get rid of all his liabilities arising from his son's past and wanted his son's family to clear out bag and baggage from the family house. In such a situation if he was anxious for the minor boy's welfare to the extent of taking responsibility for his money on himself though it be jointly with Chockalingam, clearer and decisive language was to be expected. In our opinion this has not been made out. Hence this suit of the plaintiff, junior Periakaruppa, also fails, against Ranganatha and his minor son.

The appeal is accordingly allowed and the suit is dismissed as against defendants 1 and 2 with costs throughout. GOVINDA MENON J.-I am in perfect agreement with the reasoning and conclusions contained in the judgment of my learned brother B. Jagannadhadas J. in Civil Appeal No. 169 of 1956, and I agree that the appeal be allowed with costs. In Appeal No. 104 of 1954, 1 have considerable doubts regarding the construction of cl. (3) of Exhibit P. 1. If Periakaruppa and Chockalingam were entrusted with the duty of investment, there can be no doubt whatever that they are constituted trustees. The Tamil expression 'Koduthu- Vanghi' clearly signifies investment, but the question is who is to make the investment. If Periakaruppa and Chockalingam have merely to supervise the investment, as the Tamil expression 'Mel-Parthu' means, and not actually invest the amount then the view taken by my learned brothers is right. I am inclined to think that the duty of investment is cast on Periakaruppa and Chockalingam, but as this is a matter which is not free from doubt, not without hesitation, I agree with the order passed by my learned brothers. Appeals allowed.