Kashiram Bhagshet Shete vs Bhaga Bhaushet Redij on 9 November, 1944

Equivalent citations: (1945)47BOMLR470, AIR 1945 BOMBAY 511

JUDGMENT

Bhagwati, J.

1. His Lordship after stating the facts proceeded. The plaintiff gave-evidence on his behalf and stated that he had monetary dealings with the defendants' joint and undivided Hindu family for several years prior to the severance. of joint status between the various branches of that family, that he lent and advanced monies to the defendants' joint family, that defendant No. 15 was the managing member of the defendants joint family and that there was no change in the said status of defendant No. 15 to his knowledge up to the time when defendant No. 15 signed the promissory note dated February 6, 1938, in his favour. He was cross-examined by Mr. Banaji particularly on the state of his knowledge as to the severance of joint status between the various branches of the defendants' family and the information which he might have derived generally and in particular from defendant No. 15 as regards the same. He denied that on February 6, 1938, he knew that a partition had been effected between the members of the defendants' joint family on the previous day, i.e. February 5, 1938. He admitted that on February 6, 1938, he did not ask defendant No. 15 whether there was any change in his status as the managing member of the defendants' joint family, or whether there had been any change in the status of the said joint family. No evidence was led on behalf of defendants Nos. 1 to 4 ; and on this evidence on the record I am not prepared to hold that on February 6, 1938, the plaintiff knew or was aware that a partition had been effected between the members of the defendants' joint family on February 5, 1938, or that defendant No. 15, when he executed the promissory note on February 6, 1988, was not the managing member or karta of the defendants' joint family. I hold that neither defendant No. 15 nor any other member of the defendants' joint family gave any intimation to the plaintiff of the severance of joint status between the members of the defendants' joint family or of the fact that defendant No. 15 had ceased to enjoy the status of the managing member or karta of the defendants' joint family on and after February 5, 1938.

2. On the facts recorded above, Mr. Banaji contended that the promissory note dated February 6, 1938, was not an acknowledgment within the meaning of Section 19 of the Indian Limitation Act, because (a) it was not made before the expiration of the period prescribed for a suit in respect of the monies due at the foot of the previous promissory note or the debt secured thereby, and (6) it was not signed by defendant No. 15 as the managing member or karta of the defendants' joint family or by any person duly authorised in that behalf by the defendants' joint family, the joint status having come to an end on February 5, 1938, as aforestated. Mr. Banaji contended that the previous promissory note had been executed by defendant No. 15 on February 6, 1935, and that therefore the three years period prescribed for a suit in respect of the said promissory note or the debt secured

thereby expired on February 5, 1938, with the result that when the renewed promissory note was executed by defendant No. 15 on February 6, 1938, the period of limitation had already expired and the acknowledgment even though otherwise validly signed was of no avail to the plaintiff to start a fresh period of limitation. The contention of Mr. Banaji, however, did not take count of a 12 of the Indian Limitation Act which lays down that in computing the period of limitation prescribed for any suit the date from which such period is to be reckoned shall be excluded. A suits to recover the monies due at the foot of the previous promissory note or the debt secured thereby if filed on February 6, 1938, would thus have been well within time. There is, therefore, no substance in the contention of Mr. Banaji, and if the promissory note dated February 6, 1938, be held by me to have been signed by defendant No. 15 as the managing member or karta and therefore as the agent duly authorised in that behalf by the defendants' joint family, the same would be a valid acknowledgment within the meaning of Section 19 of the Indian Limitation Act.

3. The question, however, whether the acknowledgment of liability in respect of the monies due at the foot of the promissory note or the debt secured thereby was signed by defendant No. 15 as the managing member or karta and therefore as the agent duly authorised in that behalf by or on behalf of the defendants' joint family presents considerable difficulty. There Is no doubt incorporated in Section 21 of the Indian Limitation Act by the amending Act I of 1927, Sub-section (3), which provides that where a liability has been incurred by or on behalf of a Hindu family as such, an acknowledgment or payment made by or by the duly authorised agent of the manager of the family for the time being shall be deemed to have been made on behalf of the whole family. The said sub-section, however, protects on the face of it only those acknowledgments or payments which have been made by or by the duly authorised agent of the manager of the joint family for the time being and would not cover a case like the present where the status of the joint family had been changed prior to the date of such acknowledgment or payment. Sub-section (3) of Section 21 of the Indian Limitation Act would apply in terms where the liability had been incurred by or on behalf of the joint family and the manager of the family for the time being made an acknowledgment or payment within the meaning of Sections 19 and 20 of the Indian Limitation Act. In such cases the acknowledgment or payment would be deemed to have been made by the manager of the family for the time being as one on behalf of the whole family and would be sufficient in law to start a fresh period of limitation against the whole family from the date of such acknowledgment or payment. It presupposes that the person who makes the acknowledgment or payment occupies the position of the manager of the family for the time being. If, however, 1 there has been a severance of joint status between the members of the family, Sub-section (3) of Section 21 of the Indian Limitation Act would not in terms apply, and even though the I debt or liability had been incurred by or on behalf of the joint family by its manager I for the time being, the person who was the manager of the family at the date when the said debt or liability had been incurred by him on behalf of the joint family, would not have the power to acknowledge the debt or make the part-payment so as to extend the period of limitation, as he would have ceased to be the manager of the family by the time he came to make the acknowledgment or payment. There is nothing, therefore, in Section 21, Sub-section (3), of the Indian Limitation Act, which would save the plaintiff's suit from the bar of limitation if a partition had been effected and there was a severance of joint status between the members of the defendants' joint family on February 5, 1938.

4. Mr. Laud, however, pointed out that the position of a Hindu joint family trading firm was an exceptional one and the members of a Hindu joint family trading firm occupied, as regards the outside creditors of that business, the position of partners. He referred to the decision of our Appeal Court in Raghunath Tarachand v. The Bank of Bombay (1909) 11 Bom. L.R. 255 where Batchelor J. had observed that the Courts, in establishing the legal relations of a joint Hindu family firm, treat it as a kind of partnership and apply the principles of that law. He contended that if the principles of the law of partnership were applied in this case, there was an obligation on the members of the defendants' joint family on a severance, if any, of joint status between themselves on February 5, 1938, to inform the outside creditors of the family including the plaintiff of such severance of joint status and that in the absence of any such intimation having been given by them to the plaintiff the principle of the old Section 264 of the Indian Contract Act (re-enacted in Section 45 of the Indian Partnership Act), viz. that persons dealing with a firm would not be affected by a dissolution of which no public notice had been given unless they themselves had notice of such dissolution, would apply. He also pointed out that old Section 264 of the Indian Contract Act had been applied in similar circumstances by Mirza J. to the case of a joint Hindu family in Krishnabai v. Varjivandas (1929) 32 Bom. L.R. 201 and the Court would be justified in such cases in assuming the continuance of the joint family firm, where outside creditors had continued to deal with the firm, e.g. by obtaining acknowledgments of previously existing debts even after the severance of joint status between the members of the family. He further contended that the provisions of the old Section 264 of the Indian Contract Act had been re-enacted by the Legislature in Section 45 of the Indian Partnership Act (IX of 1932) which laid down that notwithstanding the dissolution of a firm the partners continued to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution until public notice was given of the dissolution. He therefore urged that the promissory note dated February 6, 1938, having been signed by defendant No. 15, who was to the knowledge of the plaintiff the managing member or karta of the defendants' joint family, (having dealt with the plaintiff as such in the matter of the borrowing of the monies and in the matter of the execution of the said promissory note to secure the repayment of the monies so borrowed by him for the purposes of the joint family business) and whose status as such managing member or karta of the defendants' joint family had not been altered to the knowledge of the plaintiff by any notice given in that behalf by the members of the defendants' joint family, the plaintiff was entitled to assume the continuance of the defendants' joint family and of the status of defendant No. 15 as the managing member or karta thereof, with the result that the promissoy note dated February 6, 1938, should be deemed to have been executed by defendant No. 15 as the managing member or karta of the defendants' joint family, and the other members of the defendants' joint family should be held liable to the plaintiff for the said act done by defendant No. 15 as if the said act had been done by him in due course of the management of the affairs of the defendants' joint family in his capacity as the managing member or karta thereof, having had as such managing member or karta the power and authority not only to contract debts for purposes binding on the joint family and the joint family business but also to acknowledge debts so incurred by him in his capacity as the managing member or karta of the defendants' joint family.

5. Mr. Banaji, on the other hand, contended that the position of a Hindu joint family firm was quite different from that of an ordinary partnership, the former being a creature of status and the latter being a creature of contract between the parties. He contended that there were various

distinguishing features between a Hindu joint family firm and an ordinary partnership which were well recognised in the decisions of the various Courts in India, and that there was no duty cast on the members of a joint family when effecting the severance of joint status between themselves to give any intimation of such severance of joint status to outside creditors of the joint family or the joint family business. He contended that persons dealing with the manager of a joint family dealt with him at their own risk and dealt with him with full knowledge of the limitation on his powers and that, therefore, it was their duty whenever they had any dealings with the manager to make all proper inquiries whether there was the continuance of joint status or a severance of joint status between the-members of the family. In support of his contentions aforesaid he relied upon and adopted as a part of his argument the observations contained in an article published in the Bombay Law Journal, Vol. XXI, December 1943, No. 12, appearing at pp. 396 to 398, arid he also relied upon the two cases which had been cited there, viz. Ramaswami Chettiar v. Srinivasa Iyer and V.R.C.T.V.R. Chettyar v. C.A.P.C. Chettyar (1936) I.L.R. 14 Ran. 122. He argued that there having been a severance of joint status between the members of the defendants' joint family on February 5, 1938, defendant No. 15 ceased to be the managing member or karta of the said joint family and had no-authority on February 6, 1938, to sign an acknowledgment in respect of the said debt, even though the debt had been incurred by him as the managing member or karta of the defendants' joint family and for the purposes of the joint family business and that therefore the promissory note dated February 6, 1938, was not available to the plaintiff as an acknowledgment of debt or liability within the meaning of Section 19 of the Indian Limitation Act.

6. In view of the observations of Batchelor J. in Raghunath v. The Bank of Bombay, which I havd already referred to, and in view of the fact that Mirza J. had applied the principles of the old Section 264 of the Indian Contract Act to the case of a joint family firm in similar circumstances as obtained in the present case in Krishna-bai v. Varjivandas, I would have without hesitation followed that trend of decisions and held in the present case that no intimation of the severance of joint status-between the members of the defendants' joint family having been given by them ; to the plaintiff, as I have already held, the promissory note dated February 6, 1938, was an acknowledgment signed by defendant No. 15 as the duly authorised agent of the defendants joint family and was a valid acknowledgment within the meaning of Section 19 of the Indian Limitation Act. Even though Mr. Banaji did not cite the cases which were referred to in the article in the Bombay Law Journal, I looked into those cases as well as others which were referred to in the said article, and found that those cases did contain the observations to the effect I have noted above. Those observations did cast a serious doubt on the reasoning which was adopted by Batchelor J. in Raghunath v. The Bank of Bombay and by Mirza J. in Krishnabai v. Varjivandas. I also found in the latest edition of Mayne's Hindu Law a similar statement of law at p. 394, Section 305, where it is stated, relying upon the case of Rama-swam V. Srinivasa, viz, :

> A creditor dealing with the manager of a joint family does so with the knowledge of the limitations of his powers and is not entitled to any notice of any division between the members of the family for in dealing with a member of a Hindu family he does so at his peril.

> I have therefore thought it necessary to go into detail and discuss how far the principles of the law of partnership are applicable to the cases of Hindu joint family trading firms, whether there is a duty cast on the members of a joint Hindu family effecting severance of joint status amongst themselves to give intimation of such severance to outside creditors who have dealt with the joint family and the managing member or karta thereof and whether in the absence of such intimation the managing member or karta should be deemed to continue as such with power and-authority to contract debts on behalf of the joint family for purposes binding on the family and to make acknowledgments or payments in respect of such debts so as to extend the period of limitation.

7. So far as our own High Court is concerned, the earliest case on the point is Ramlal Thakurdas v. Lakhmichand Muniram et al (1861) 1 B.H.C.R. (Appx.) 51 The question which was discussed there was to what extent a minor member of an undivided Hindu family would be held bound by the acts of the family manager with reference to an ancestral family trade. The whole matter was discussed and decided as res Integra and by the application of established principles of law, there having been no cases referred to in the argument before the Court which could guide or help the Court in arriving at a decision of the question. In discussing that question Sir Mathew Sausse C. J. observed (p. 71):

> The case of Petumdoss V. Ramdhone Doss, Taylor, Rep. 279, before Sir L. Peel is an authority that an ancestral trade, like other Hindu property, will descend upon the members of a Hindu undivided family ; and we think that such a family can, by its manager or its adult members acting as managers, enter into copartnership with a stranger.
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> In carrying on such a trade, infant members of the undivided family will be bound by all acts of the manager, or the adult members acting as manager, which are necessarily incident to and flowing out of the carrying on of that trade, whether it be singly or with a copartner.
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> The power of a manager to carry on a family trade necessarily implies a power to pledge the property and credit of the family for the ordinary purposes' of that trade. Third parties, in the ordinary course of bona fide trade dealings, should not be held bound to investigate the Status of the family represented by the manager whilst dealing with him on the credit of the family property.
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> Were such a power not implied, property in a family trade, which is recognised by Hindu Law to be a valuable inheritance, would become practically valueless to the other members of an undivided family where an infant was concerned, for no one would deal with a manager, if the minor were to be at liberty on coming of age to challenge as against third parties the trade transactions which took place during his minority.

The general benefit of the undivided family is considered by Hindu Law to be paramount to any individual interest, and the recognition of a trade, as inheritable property, renders it necessary for the general benefit of the family that the protection, which the Hindu Law generally extends to the interest of a minor, should be so far trenched upon as to bind him by acts of the family manager necessary for the carrying on and consequent preservation of that family property ; but that infringement is not to be carried beyond the actual necessity of the caste.

This decision in Ramlal v. Lakhmichand was followed by our Appeal Court in Samalbhai Nathubhai v. Someshvar Mangal and Harkisan (1880) I.L.R. 5 Bom. 38. In that case the father of the defendants had established a trading firm in 1865 in his own name. He and his three sons had lived together as a joint Hindu family and he died in 1872, whereafter the business was continued under the same name by one of the defendants as the eldest brother and manager of the family, the youngest of the three being a minor at the date of the father's death. The plaintiff sued the three brothers to recover monies due on account of a promissory note signed by the eldest brother in the name of the firm. One of the other brothers contended that he had never participated in the property of the business, that he had not resided at the family residence for six years and that he could not be considered as a partner of the firm and therefore was not liable to the plaintiff. In the course of the judgment Melvill J. though recognising that it was not a case of an ordinary partnership arising out of a contract but was a case of joint ownership in a trading business created through operation of Hindu Law between the members of an undivided Hindu family, stated that the rights and liabilities arising out of such a relation could not be determined by exclusive reference to the Indian Contract Act, but must be considered also with regard to the general rules of Hindu Law, which regulated the transactions of united families. He pointed out, following Randal v. Lakhmichand, that an ancestral, trade might descend, like other inheritable property, upon the members of a Hindu undivided family, but that the partnership so created, or surviving, had many, but not all of the elements existing in an ordinary partnership. He pointed out that after the death of the father, the business, which had been started by means of the joint family fund and had become the joint property of the father and the sons, had been continued in the name of the father and had been continued by the eldest brother only, that the other brother who contested his liability was a joint owner of the firm and had acquiesced in the continuance of the firm under the same name and ostensibly, therefore, with the same constitution, that he had never done any act to divest himself of his share in the business, that he had given no notice of repudiation and had made no partition with his brothers, and that there was nothing to prevent him from demanding his share of the partnership stock, or claiming his share in the property. Melvill J. therefore held that he Haw no reason for exempting him. from the ordinary rule of Hindu Law, which makes every member of a united family liable for debts properly incurred by a manager for the benefit of the family. The other brother was, therefore, held liable for the debts due to the plaintiff. The decision in this case was reached on the basis of the powers which the manager enjoys to incur

> debts for the benefit of the family and the liability of the members of a united family for payment of debts so incurred by the manager for the benefit of the family ; and the Court relied on the circumstances of the defendant having acquiesced in the continuance of the firm under the same name and ostensibly with the same constitution and his having not done any act to divest himself of his share in the business and having given no notice of repudiation and having made no partition with his brothers as circumstances pointing to his liability for the debts duly incurred by the manager for the benefit of the family, a liability which is analogous to that of a partner on whose behalf, and as whose agent, a business is carried on by another partner making him liable for debts incurred by such partner in the course of the partnership business, thus applying, so far as possible and in so far as they are not opposed to any of the principles of Hindu Law, the principles of liability under the law of partnership.

8. This decision in Samalbhai v. Someshnar was approved of by the Appeal Court in In the Matter of Baroon Mahomed (1890) I.L.R. 14 Bom. 189. The matter came before the Court in its Insolvency jurisdiction. There was a firm of Haji Mitha Cassum which was adjudged an insolvent and the appellant was also adjudicated an insolvent as one of the partners in that firm. The firm had existed for forty years having been established by the grandfather of the appellant and had ever since been carried on under the same name by the family of the founder. The petitioning creditors had alleged that the members of the insolvent's family lived together and were joint in food and estate, and that the firm was a family firm, that the appellant's father had been principal manager of the firm in his lifetime and that on his death two years previously the appellant had taken his place. The appellant denied that he was joint with the other members of the family, or that he had ever been a partner, or had represented himself to be a partner in the firm. The appellant appealed against the order of adjudication.

Sir Charles Sargent C.J., who delivered the judgment of the Court, held that the appellant being a Cutchi Memon, as Cutchi Memons the rules of Hindu Law and custom applied to them and that the position of the appellant with regard to the family property must be determined by the same considerations as would apply in the case of a member of a joint and undivided Hindu family, and that the firm being a family firm was the property of a family subject to Hindu Law. The learned Chief Justice then referred to the case of Samalbhai v. Someshvar hereinbefore referred to and observed that whatever may have been the appellant's position previous to his father's death, it was clear that on his father's death his share by law descended to the appellant and his brothers, if any, and that the appellant then became a partner in the firm if he had not been so already. No distinction seems to have been observed in this case between the status of the appellant as a partner and that as a member of the family firm. On the contrary, the Court considered that it was open to the appellant to show that he did not become a partner in the firm and discussed the part taken by him in the business of the firm after the death of his father as showing his active participation in the affairs of the firm and his virtually occupying the position as the partner in the firm in any event after his father's death. This decision also considered, as the earlier one in Samalbhai v. Someshvar did, that the active participation by the appellant in the business of the firm even though it was a joint Hindu family firm was enough to constitute him in the eye of the law a, partner liable as such

to the outside creditors of the joint family firm, thus applying the principles of the law of partnership so far as they could be applied to the case of a joint Hindu family firm.

9. The case of Ramlal v. Lakhmichand next came up for consideration and 'was followed in Rampartap Samrathrai v. Foolibai and Goolibai (1896) I.L.R. I.L.R. 20Bom. 767. In that case an ancestral trade descended upon a minor as the sole member of the family and the ancestral trade was carried on under the superintendence of the minor's natural guardian, for the benefit of herself and the minor by a manager duly appointed in that behalf by the minor's natural guardian. The question of the minor's liability for debts duly incurred by the manager in the course of the management of the ancestral business thus came up for consideration. Candy J. discussed the position of an infant trading or becoming partner with a trader under the English law as also the position occupied by an infant partner under old Section 247 of the Indian Contract Act, under which the infant partner while entitled to share the profits of the business was not liable for the losses except to the extent of his own share in the partnership property. Whilst discussing the argument that it was no case of partnership but that the minor was the sole owner of the firm and therefore old Section 247 of the Indian Contract Act was not applicable, he observed that strictly speaking that was so. Nevertheless he followed the decision of the Calcutta High Court in Joykisto Cowar v. Nittyanund Nundy (1878) I.L.R. 3 Cal. 738 which laid down that on principle there ought not to be any difference between the nature of the liability of an infant admitted by contract into partnership and that of one on whose behalf an ancestral trade was carried on by the manager. He reaffirmed the principle of the decision in Ramlal v. Lakhmichand and held that the guardian of a Hindu minor was competent to carry on ancestral trade on behalf of the minor, that the minor was bound by all the acts of the manager (or its adult members acting as managers) which were necessarily incidental to or flowing out of the carrying on of that trade, and that the same principle would hold good when the sole member of the Hindu family was an infant as in that case and the ancestral trade was carried on under the superintendence of the natural guardian of the minor for the benefit of herself (she having a claim to maintenance) and the minor. In this case also the Court applied the principles of the law of partnership in so far as the same were not opposed to any principles of Hindu Law, applied the analogy of old Section 247 of the Indian Contract Act and decided the case on the basis of the said principle along with the principles of the Hindu Law applicable thereto.

10. The nature and incidents of an ancestral trade or business came up for consideration before a full bench of our High Court in Sakrabhai v. Maganlal (1901) I.L.R. 26 Bom. 206 : S.C. 3 Bom. L.R. 738 F.B. The question for the decision of the Court was whether trade debts properly incurred by a Hindu widow on the credit of the assets of the business to which she had succeeded as the heiress of her deceased husband were recoverable after her death out of the assets of the business as against the reversioners who had succeeded thereto, even' in the absence of a specific charge. The case was heard by a division bench composed of Jenkins C.J. and Chandavarkar J., who referred it to a full bench. The full bench was constituted by Jenkins C.J., Candy and Chandavarkar JJ. The judgment of the full bench was delivered by Jenkins C. J. who discussed the nature and incidents of the ancestral trade. In the course of his judgment he quoted in extenso the passage from the judgment of Sir Mathew Sausse in Ramlal v. Lakhmichand hereinbefore set out and fully endorsed the principles therein laid down. He observed that the case had since been consistently followed. He

referred to the decision in Johurra Bibee v. Shreegopal Mislser (1876) I.L.R. 1 Cal. 470 where Pontifex J. observed after giving the effect of that decision (p. 475):

> In other words, it seems to me that those who claim to participate in the, benefits must also be subject to the liabilities of the joint business.

> He also referred to the decision in Joykisto Cowar v. Nittyanund Nundy (1878) I.L.R. 3 Cal. 738, where it was decided that, where the ancestral trade of a Hindu was carried on after his death for the benefit of his infant children by their guardian, and debts were incurred by the firm in the course of the business, the infants were liable to the extent of their shares in the property of the firm. He then referred to the decision in Samalbhai v. Someshvar mentioned above. He also quoted a passage from Bemola Dossee v. Mohun Dossee (1880) I.L.R. 3 Cal. 738 (p. 804):

> In this case Gour Churn certainly had an implied power to borrow on the credit of the joint family as partners in the firm; also we think, he had power to borrow on the credit of the joint family, as a joint family for the purposes of the firm, A joint family carrying on a business is necessarily a peculiar kind of partnership. It does not cease on death ; but the shares in it are inheritable along with the shares in the joint family property.

> He then referred to the decision in Rampartab v. Foolibai above quoted, and wound up by saying that those cases indicated the nature and qualities of an ancestral business and laid down the principles pertinent to it. The above observations of the learned Chief Justice while summarising all the cases relevant to the point do show that even though the rules of Hindu Law are primarily to govern the relations of the members inter se as regards an ancestral business which descends on the members of a joint family as an inheritable asset, as regards the dealings of the joint family with and the liabilities of the members of the joint family to outside creditors who had dealings with the joint family, they are to be governed also by the principles of the law of partnership under the Indian Contract Act (now the Indian Partnership Act), in so far as the said principles are not opposed to the principles of Hindu Law.

11. The case of Samalbhai v. Someshvar came up for consideration before the Appeal 'Court in Gokal Kastur v. Amarchand . In that case the father, being the managing member of a joint family consisting of himself and his four sons, contracted a debt in the course of dealings relating to the joint family concern and for the1 purposes of that concern. He was assisted in his business by three of his sons who were adults, the fourth son being a minor. After the death of the father the creditor brought a suit against all the four sons to recover the amount from them. It was argued that the acknowledgment in respect of the debt having been signed by the father alone and that too after the failure of the firm which was a family firm was not binding on those who did not sign it, viz. the other partners and that as soon as the business failed the authority of the managing member to bind the other members of the firm ceased to exist. Chandavarkar J., however, in the course of the argument pointed out that it was not a case of a partnership governed by the Indian Contract Act,

that the Indian Contract Act did not apply to Hindu family business debts and that the Court must look to Hindu Law for the purpose of the decision. In the course of his judgment Chandavarkar J. accepted the finding of the lower appellate Court that the debts in dispute were contracted by the father as the manager of the joint family of which he and the sons were coparceners for the purposes of a partnership business of that family, the necessary sequence of which was that the debts were legally binding upon the defendants. Dealing,, however, with the argument which had been advanced on behalf of the appellants that the acknowledgment was not binding upon the defendants because it was an acknowledgment made by the father at a time when the partnership business had come to an end, the learned Judge observed that assuming that the business had come to an end at that time, still the Court must have regard to the principles of the Hindu Law in determining the question whether the acknowledgment was or was not binding upon the other members. The learned Judge quoted with approval the observations in Samalbhai v. Someshvar that the rules which regulated such a business in which a joint family was concerned were the rules which must be drawn from the Hindu Law, and stated that according to the Hindu Law, if that was a joint family business, the father as the joint manager was entitled to incur any debt and the case would fall within the principles laid down in Bhasker Tatya Shet v. Vijalal Nathu (1892) I.L.R. 17 Bom. 512, viz. "that the member of a joint Hindu family has authority to acknowledge the liability of the family for the debts which he has properly contracted." As regards the personal liability of defendants Nos. 1 to 3, the adult sons of the deceased, the learned Judge did not go into the question any further than observing that the debts were contracted by the father in the course of dealings relating to the joint family concern and for the purposes of that concern and that therefore the adult defendants must be treated as having acquiesced in the course of that dealing. As regards the minor defendant, the learned Judge modified the decree against him on account of his minority making it executable against his share in the family property and not personally. It is to be observed that Chandavarkar J. refused in this case to follow the principles of the law of partnership as such and understood the decision in Samalbhai v. Someshvar as laying down that the rules which regulate a business in which a joint Hindu family is concerned were rules which must be drawn from the Hindu Law and decided the case against the defendants on the basis of the liability of the members of a joint family by reason of the authority of the manager to incur debts for and on behalf of the joint family and acknowledge the same.

12. The nature and incidents of a joint Hindu family business came in for further consideration before the Appeal Court in Raghunath Tarachand v. The Bank of Bombay (1909) 11 Bom. L.R. 255 before a bench constituted by Chandavarkar and Batchelor JJ. In that case the managing member of a joint family trading firm had contracted debts by executing promissory notes in the name of the firm though the promissory notes were passed by him to accommodate a friend of his and without any advantage to the firm. A suit was filed against the firm to recover monies due at the foot of the said promissory notes. A minor coparcener in the firm contended that he was not liable on the said promissory notes. The case was fully argued before the Appeal Court and Chandavarkar J. delivered a very well-considered and learned judgment expounding the principles of Hindu Law which governed joint Hindu family trading firms and the liability of members of such firms to outside creditors. In the course of his judgment he observed (p. 261):

The reason of the rule that partners in trade have authority, as, regards third persons, to bind the firm by bills of exchange or a promissory note is stated in Tudor's Selection of Leading cases on Mercantile and Maritime Law (3rd Edn. p. 477) to be that, in the case of mercantile partnerships, the circulating of negotiable instruments is necessary. The drawing and accepting of bills and the giving of promissory notes is 'part of the ordinary course of such a partnership', because, having regard to its nature, that power is essential and is incidental to its purposes : see the judgment of Cockburn C.J. in Nicholson v. Ricketts (1860) 2 E & E. 497, 523 The rule has been adopted and enforced in the case of trading partnerships in the interests of trade and the necessities of commerce, and has become a rule of the trade.

It is true that neither any Smriti nor authoritative commentary on Hindu Law expressly recognises any such law with reference to a joint Hindu family carrying on a trade in the capacity of a firm or to any other trading firm. But it follows, I think, from certain general principles laid down by some of the Smriti writers and their commentators that where such a family embarks on a trade for the purposes of its livelihood it is bound by all the rules and laws applicable to that trade.

The learned Judge thereafter went on to discuss the various texts of Hindu Law and also referred to the cases beginning with Ramlal v. Lakhmichand and ending with Sakrabhai v. Maganlal Mulchand hereinbefore referred to, and after discussing those cases he observed (p. 265):

I should have declined to act upon the dicta in these cases had I found no support for them in the Hindu Law books. I am of opinion that they correctly express the Hindu Law on the subject, having regard to the texts to which I have referred in this judgment. In Samalbhai v. Someshvar it has been held by this Court that a joint family carrying on business as a firm is not exclusively governed either by the principles applicable to joint families as such or by the Contract Act. It is, I think, a necessary inference from that decision that those principles will apply to such a firm only so far as they are not opposed to but are, consistent with the necessary incidents of trade and the paramount interests of commerce.

It is necessary to observe that in this case the learned Judge did not refer to the case of Samalbhai v. Someshvar as merely laying down, as he had observed in Gokal Kastur v. Amarchand, that the rules which regulate such a business in which a joint Hindu family is concerned, were the rules which must be drawn from the Hindu Law, but went a step further and stated that the said decision according to him meant that a joint Hindu family carrying on business as a firm was not exclusively governed by the principles of Hindu Law applicable to the joint Hindu family as such or by the Contract Act and he necessarily inferred from that decision that those principles will apply to such a firm only so far as they were not opposed to but were consistent with the necessary incidents of trade and the paramount interests of commerce. It is also necessary to observe that whilst discussing the incidents of the family business the

learned Judge had observed (p. 263):

it is merchants alone who know best what the rules of their profession, adopted in the interests of trade, are. The implication is that such rules must be followed in the interests of trade. Nowhere is it stated that these rules do not apply to a joint family carrying on a trade as its kulachara or family-business merely because it occupies also the status of a joint family. If then our Courts have held that, in the interests of commerce, one member of a trading firm has power to bind the other members, whether they be minors or adults, by means of a negotiable instrument given in the name of the firm in favour of a bona fide holder for value, and if that rule has become a necessary incident of that trade, or part of its mechanism, the authority of the texts above-cited supports the view that all members of the firm are bound by a promissory note given by one of them in the name of the firm.

The learned Judge held that the minor was liable for the debts contracted by the managing coparcener for trading purposes or purpose incidental to it, having regard to the nature and objects of the family business, observing that the circulating of the negotiable instruments was in the case of a joint Hindu family trading as a firm, necessary for its existence and its purposes, that it was a necessary incident of the carrying on of the trade and that without it the firm could not gain credit in the market and prosper, a conclusion which, in his opinion, arose from the general principles of Hindu Law which he had discussed in the earlier part of his judgment and did not require the aid of either Section 247 or any other provision of the Indian Contract Act. According to this judgment of Chandavarkar J. therefore the principles applicable in the case of joint Hindu family trading firms were not merely the principles exclusively derived from the Hindu Law or from the Indian Contract Act but the said principles in so far as they were not opposed to but were consistent with the necessary incidents of trade and the paramount interests of commerce. Batchelor J., however, went a step further. He observed that the firm was not strictly a partnership but was one of the assets of an undivided Hindu family in which the1 managing member and the minor were coparceners, but, on the other hand, the analogy between such a joint firm in its relations with the outer world and an ordinary partnership was in many respects extremely close. He discussed the cases beginning with Ramlal v. Lakhmichand and ending with Sakrabhai v. Maganlal hereinbefore referred to. He also discussed the various sections of the Indian Contract Act which had been cited at the bar and which had also been referred to in several of the cases and observed-that he need not pursue the cases further : Enough had been cited to show that in establishing the legal relation of a joint firm the Courts treated it as a kind of partnership and applied the principles of that law. He observed that old Section 247 of the Indian Contract Act appeared to him to furnish distinct authority for the said view, which, so far as he could gather, was not in conflict with any text of the Hindu Law dealing specifically with the legal position of an ancestral firm in its dealings with the outside world of commerce, and that the test to be applied in such cases was rather the apparent authority of the manager than the

actual necessity of the family. He further observed that it was to his mind a perfectly reasonable position, for while there was no absolute necessity for the family to trade at all, when once the family trade was admitted, all usual acts done in the normal course of carrying it on may be considered necessary to the trade. He further observed (p. 271):

If this reasoning is right, we have taken what appears to be the really important step in the case, that is, the step from the ordinary Hindu Law as to a manager's power of alienation to the law of partnership ; and, that step taken, the decision of the appeal does not seem to present much difficulty.

Batchelor J. thus took the further step of applying all the way the principles of the law of partnership even in the case of a joint Hindu family trading firm. Even though one may not agree with this reasoning of Batchelor J. as regards the applicability wholesale of the principles of the law of partnership to the joint Hindu family trading firms, the result of the decisions hereinbefore referred to, ending with the decision of Chandavarkar J. in this case, appears to be that in determining the liability of the members of a joint Hindu family as regards the debts incurred by the managing member or karta of the joint family for the purposes of the family business, regard should be had also to the principles of the law of partnership laid down in the Indian Contract Act (now the Indian Partnership Act) in so far as they are not opposed to the principles of Hindu Law which are applicable to joint Hindu family trading firms, and that in ascertaining the powers and authority of the managing member or karta of a joint Hindu family to contract debts for the purposes of the joint family business and to make acknowledgments or part-payments in respect of such debts so as to extend the period of limitation, regard should be had not only to the principles of Hindu Law but also to the principles of the law of partnership laid down in the Indian Contract Act (now the Indian Partnership Act) in so far as the same are not opposed to the principles of Hindu Law.

13. In the light of the above, the decision of Mirza J. in Krishnabai v. Varjivandas (1919) 32 Bom. L.R. 201 does not require any comment. In that case a business firm was carried on by three brothers who at the date of the loan were interested therein either as partners or members of a joint and undivided Hindu family. The three brothers came to a partition amongst themselves after the debt was contracted. No public notice, however, was given of the dissolution of the original firm of the three brothers, and one of the brothers as the sole owner of the firm continued the firm in its old form after the partition, and in due course signed in favour of the plaintiff an acknowledgment in the name of the firm admitting liability to the plaintiff in respect of the said debt inclusive of interest up to the date of such acknowledgment. When the plaintiff filed a suit against all the three brothers on the strength of that acknowledgment, the brothers other than the one who had signed that acknowledgment contended that the said acknowledgment was not binding on them because the same had been signed after the date of partition and was therefore not enough in law to save the bar of limitation against them. Mirza J. applied the principle of the old Section 264 of the Indian Contract Act and observed that if that section was applicable to a joint family firm, the continuance

of the firm in cases where persons had dealt with the firm, e.g. by obtaining an acknowledgment of a previously existing debt, must be assumed. The learned Judge dealt with the argument of counsel that the old Section 264 of the Indian Contract Act was not applicable to a Hindu joint family and observed that in his judgment there was no material difference between an ordinary partnership firm and a Hindu joint family firm consisting of adult coparceners who actively conducted the business of the firm. He observed that the acknowledgment being signed by the continuing member in the name of the original firm was binding upon him as a partner of that firm, and that it was also binding upon the other brothers as the original firm must be deemed to have continued and the continuing member must be deemed to have authority as partner to bind his late partners along with himself by the acknowledgment. Even though the principles governing such transactions were not argued or discussed in such detail as they should have been, the principle of the decision is, however, not wrong having due regard to the observations which I have made in the earlier portion of this judgment. If in the case of the joint Hindu family trading firms the principles of the law of partnership laid down in the Indian Contract Act (now the Indian Partnership Act) are to be applied in so far as they are not opposed to the principles of Hindu Law applicable to joint Hindu family trading firms, the power" or authority of a managing member or karta of a joint family to bind the other members of the joint family by debts contracted for the benefit of the joint family and for the purposes of the joint family business and to make acknowledgments or part-payments in respect of such debts so as to extend the period of limitation should also be determined having regard to the principles of the law of partnership laid down in the Indian Contract Act (now the Indian Partnership Act) in so far as they are not opposed to the principles of Hindu Law applicable to the joint Hindu family trading firms.

14. This brings me to the consideration of what are the principles of Hindu Law applicable to joint Hindu family trading firms and the power or authority of the managing member or the karta ; of a joint Hindu family in the course of management of the same. Whilst considering the above, one should have due regard to certain fundamental principles underlying joint Hindu families. The joint and undivided family is the normal condition of Hindu society. An undivided Hindu family is ordinarily joint not only in estate but in food and worship. The presumption therefore is that members of a Hindu family are living in a state of union unless the contrary is established. This is what is called the presumption of union. "The strength of the presumption necessarily varies in every case, The presumption of union is stronger in the case of brothers than in the case of cousins, and the farther you go from the founder of the family the presumption becomes weaker and weaker." That presumption is peculiarly strong in the case of the sons of one father. There is also what is called the presumption of jointness. "The normal state of every Hindu family is joint. Presumably every such family is joint in food, worship and estate. In the absence of proof of division, such is the legal presumption." In other words " given a joint Hindu family, the presumption is, until the contrary is proved, that family continues joint." These are the two presumptions of union and jointness which are well recognised in Hindu Law. So long as the members of a family remain undivided, as a general rule the father of the family if alive or in his absence the senior member of the family is entitled to manage the joint family property. The manager of the joint family is called the karta. The manager of the joint family has an implied authority to contract debts and pledge the credit and property of the family for the ordinary purposes of the family business. Such debts, if incurred in the ordinary course of business, are

binding on the family property including the interest of the minor coparceners therein. Besides the power; to contract debts for the family business the manager has the power of making contracts, giving receipts and compromising or discharging claims ordinarily incidental to the business. Without a general power of that kind it would be impossible for the business to be carried on at all. Kishen Parshad v. Har Narain Singh (1910) L.R. 38 I.A.45 : S.C. 13 Bom. L.R. 359

15. The position of the manager is thus summarised by Tudball J. in Hori Lal v. Munman Kunwar (1912) I.L.R. 34 All. 549 F.B (pp. 564 and 565):

> Now the general rule of Hindu Law is that a joint family is represented by its manager in all its transactions or concerns with the outer world, provided they are for family necessity (vide I.L.R. 32 Bom. 375). In certain circumstances the manager has power to mortgage or sell the family property.
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> The manager is neither a partner nor principal, nor an agent of the family, but a sort of representative owner, his independent right being limited on all sides by the correlative rights of others, &c. (vide Cowell's Tagore Law Lectures, 1870, p. 108). Where the manager borrows money on promissory notes for the purpose of a joint family business or to meet a joint family necessity, the creditor can recover the money from all the members of the family, although they have not been parties to the notes (vide 11 C.W.N. 139 and 7 C.W.N. 725 and 34 Bom. 72. One of the duties of a manager is to get in the income and pay the debts of the family. (See Bhattacharya's Law of the Joint Family, p. 295).
>
> He can give a valid discharge without the concurrence of the minor members of the family (I. L. Rule 25 Mad. 26).
>
> It is difficult to see, therefore, why a manager, if he can represent the family in its transactions and concerns with the outer world, should not be also able to represent the family in its litigations in the Courts.
>
> Such a person is not the agent of the members of the family so as to make them liable to be sued as if they were the principals of the manager. The relation of such persons is not that of principal or agent, or of partners ; it is much more like that of trustee and cestui que trust." Annamalai Chetty v. Murugasa Chetty (1903) L.R. 30 I.A. 220, 228 : S.C. 5 Bom. L.R. 494.
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> The managing member of a trading family has wider powers than the manager of a non-trading family. There is no deviation from the fundamental principle that what is done must be for the benefit or necessities, of the family, but acts such as the incurring of debts and drawing of negotiable instruments are necessities to a trading family while they would not be to a non-trading family. Credit is the very essence of trade and the existence of business creates the necessity for borrowing and purchasing on credit. The power of a manager therefore to carry on the family trade

necessarily implies a power to pledge the property and credits of the family for the ordinary purposes of that trade and transactions which are entered into by such manager and which would come within the ostensible authority of such manager as conducting the family business would also be binding on the members of the family. The manager further has the authority to acknowledge on behalf of the family a debt due by the family as well as to pay interest on it or make part-payment of principal so as to enable a fresh period of limitation to be computed, but he has no power to pass a promissory note so as to revive a debt barred by the law of limitation. The power of the manager to make acknowledgments or part-payments in respect of such debts so as to extend the period of limitation is judicially recognised in Bhasker Tatya Shet v. Vijalal Nathu (1892) I.L.R. 17 Bom. 512, where Parsons J. observed as under (p. 514):

We can see no practical difference between the power to create a debt and the power to acknowledge a liability for the debt so created. Ordinarily the power to do the one impliedly involves the power to do the other. No greater authorisation is needed for the one act than for the other. If then, by Hindu Law the manager of the family has under certain conditions authority to contract debts for which the family is liable, he has by the same law authority to acknowledge the liability of the family for the debts which he has properly contracted. This latter authority is, we think, entitled equally with the former to be considered a part of the functions of that member who is managing on behalf of the family. The exercise of such an authority must often be necessary and may be very beneficial to the family.

In Hindu Law the business is a distinct heritable asset. Where a Hindu dies leaving a business, it descends, like other heritable property to his heirs. If he dies leaving male issue, it descends to them. In the hands of the male issue it becomes joint family business, and the firm which consists of the male issue becomes a joint family firm. The joint ownership so created between the male issue is not an ordinary partnership arising out of the contract, but a family partnership created by the operation of law. Therefore, the rights and liabilities of the coparceners constituting the family firm are not to be determined by exclusive reference to the provisions of the Indian Partnership Act, 1922, but must be considered also with regard to the principles of Hindu Law which regulate the transactions of joint families. A Hindu joint family firm is not dissolved by the death of a coparcener. A coparcener is not entitled, on severing his connection with the family firm, to ask for accounts of past profits and losses. The manager alone has the implied authority to contract debts and pledge the credit and property of the family for the ordinary purposes of the family business. In the case of debts contracted by the manager in pursuance of such implied authority in the ordinary course of the family business the manager is liable not only to the extent of his share in the joint family property, but being a party to the contract is liable personally, i.e. to say his separate property is also liable. But as regards the other coparceners, they are liable only to the extent of their interest in the family property, unless, in the case of adult coparceners, the contract sued upon, though purporting to have been entered into by the manager alone, is in reality one to which they are actual

contracting parties, or one to which they can be treated as being contracting parties by reason of their conduct, or one which they have subsequently ratified ; and, in the case of minor coparceners, unless the contract has been ratified by them on attaining majority.

16. This being the position as regards joint Hindu families and joint Hindu family trading firms according to the principles of Hindu Law, it remains to consider how far one would be safe in applying to the case of a joint Hindu family trading firm the principle of the law of partnership enunciated in the old Section 264 of the Indian Contract Act, now re-enacted in Section 45 of the Indian Partnership Act, which lays down that notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution. As has been stated above, the position of the manager or karta of the joint family is not merely that of a partner nor that of a principal or an agent of the other members of the joint family but is that of a sort of representative owner, his independent right being limited on all sides by the correlative rights of others, etc. He is by reason of his very status as the manager or karta of the joint family held out by the other members of the joint family as the person representing them in all transactions which the joint family would enter into with the outside world and within the limitations set on his powers in'that behalf he binds all the members of the joint family by acts done by him in due course of the management of the joint family business including the contracting of debts and the making of acknowledgments or part-payments in respect of the same, so as to extend the period of limitation.

17. This being the position of the manager or karta of the family as regards the transactions entered into by the joint family with the outside world, would not the presumptions of union and jointness well recognised in Hindu Law be available to an outside creditor so that he would be justified in presuming that the family continued to be joint until it was shown that there was a severance of joint status amongst the members of the family and that the manager or karta of the family continued to enjoy the status as such manager or karta until it was similarly shown that there was a severance of joint status between the members of the family and that the manager or karta had ceased to enjoy the status as such manager or karta of the joint family? If the presumptions of union and jointness are of any avail, they would necessarily lead to the inference that once a Hindu family was joint and a person was the manager or karta of such joint family, the family would continue to be joint and the manager or karta would continue to be the manager or karta of the family until the contrary was shown. Apart from these being the presumptions well recognised in Hindu Law, there is also in law a presumption founded on the experienced continuance, or immutability, for a longer or shorter period of human affairs.

When, therefore, the existence of a person, or personal relation, or a state of things, is once established by proof, the law presumes that the person, relation, or state of things continues to exist as before, till the contrary is shown, or till a different presumption is raised, from the nature of the subject in question. A partnership, agency, tenancy,, or other similar relation, once shown to exist, is presumed to continue till it is proved to have been dissolved.

(Vide Taylor on Evidence, 12th edn., Vol. I, Section 196).

To the same effect is the passage from Best on Evidence, 12th edn., p. 345, Section 405:

> It is a very general presumption that things once proved to have existed in a particular state are to be understood as continuing in that state until the contrary is established by evidence, either direct or circumstantial.
>
> This presumption is also recognised by Section 109 of the Indian Evidence Act which lays down that:
>
> When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.
>
> In the commentary on Section 109 of the Indian Evidence Act, Ameer Ali says that the principle upon which this section is based is one of general application, and that the presumption upon which it proceeds has been applied to other cases than those particularly mentioned in the section. Sarkar in his commentary on Section 109 of the Indian Evidence Act also has the same remarks to offer and observes:
>
> So under Hindu Law a family once joint is presumed to retain that character till division is shown The presumption of continuance of relation or state of things is also recognised by their Lordships of the Privy Council in Mussumat jariut-ool-Bulool v. Mussumat Begum Hosseinee (1867) L.R. 11 I.A. 194 (p. 208:
>
> The ordinary legal presumption is, that things remain in their original state.
>
> See also Garth C.J. in Obhoy Chum Sircar v. Huri Nath Roy (1881) I.L.R. 8 Cal. 72, 79.

18. If the above is the correct position in law, both according to the presumptions of union and jointness known to Hindu Law and the presumption of the continuance of relation or state of things according to the ordinary law, would not an outside creditor dealing with the manager of a joint family be entitled to presume the continuance of the family as a joint family and the continuance of the manager or karta as the manager or karta of such joint family until it was shown to him, either by notice which law lays down as proper notice in that behalf or by individual notice given to him, that the status of the family as a joint family had come to an end by severance of joint status between the members of the family and the status of the manager or karta as the manager or karta of the family had also therefore come to an end? In other words, if a joint family carrying on a joint family business through its manager or karta had, occasion to borrow monies from an outside creditor for the purposes of the joint family business, would it not be the duty of the manager or karta as well as the other members of the joint family to give proper notice to the outside creditor with whom the joint family had dealings that there was a severance of joint status between the members of the family and that the manager or karta no longer enjoyed the status of the manager or karta of the

family so that the outside creditor dealing with such manager or karta after the severance of joint status between the members of the family would no longer continue to act under the presumptions of union and jointness known to Hindu Law and or the presumption of the continuance of relation or state of things according to the ordinary law and take proper steps to safeguard his interests in the matter of the recovery of his outstanding or securing the same by taking appropriate steps in that behalf? If the carrying on the joint family business for the benefit of all the members of the family is one of the functions performed by the manager or karta of the joint family, the borrowing of monies for the purpose of carrying on the joint family business and the making of the acknowledgments or part-payments in respect of the same so as to extend the period of limitation would be an incident of the carrying on of the joint family business. All the members of the joint family would share in the profits of that business and would take benefit thereunder. Without the manager being empowered to contract such debts and to make acknowledgments or part-payments in respect of the same it would be impossible to carry on the business of the joint family with any benefit to the members of the family, and as Chandavarkar J. has pointed out in Raghunath Tarachand v. The Bank of Bombay it would be one of the incidents of trade which was carried on by the joint family to do all these things through the manager or karta. It would be an incident of the kulachara, i.e. the family trade carried on by the members of the joint family through their manager or karta. If these are the privileges enjoyed by the other members of the joint family of carrying on the joint family business through their manager or karta who is held out to the outside world as representing the whole family for the purposes of inter alia contracting debts and making acknowledgments or part-payments in respect of the same, is there no corresponding duty cast on them when they effect a severance of joint status amongst themselves and thus affect the status of the manager or karta as the manager or karta of the joint family divesting him of all representative capacity as regards the affairs of the joint family, to intimate to the outside creditors who have dealt with the manager or karta on the credit of the properties and assets belonging to the joint family and the joint family business that such a change in the status of the joint family and its manager or karta has been brought about? In this connection it may be observed that the severance of joint status can be brought about between the members of a joint family even by a definite and unequivocal indication of his intention by a member of the joint family to separate himself from the family and enjoy his share in severalty, and once a member of a joint family has clearly and unequivocally intimated to the other members his desire to separate himself from the joint family, his right to obtain and possess a share is unimpeachable whether or not they agree to a separation and there is an immediate severance of joint status. To all outside appearances the family might continue joint as before, the members thereof might continue to enjoy the properties and assets belonging to-the joint family and joint family business as before and the outside creditors might not know anything about the partition which has been so brought about by one member of the joint family having clearly and unequivocally intimated to the other members his desire to separate himself from the joint family ; for no overt act need necessarily be done by the members of the joint family tot effect a severance of joint status amongst themselves. If this be the position, what would be the safety of the outside creditors in dealing with the joint family through its manager or karta, for to all outside appearances the manager or karta might continue to be the manager or karta of the joint family dealing with the outside creditors as before.

19. There is also a further position which has to be borne in mind, and it is that all the properties and assets of the joint family are liable for payment of the debts contracted by the manager or karta for the family necessities as well as for carrying on-joint family business including the shares of the minor coparceners and their interest therein. All such debts duly contracted by the manager or karta would have to be paid out of the properties and assets of the joint family before any partition could be effected between the members of the joint family and the individual members of the family would be liable to pay the same out of the properties which came to their respective shares on partition even though at the time of the partition the same might not have been paid out of the properties and assets of the joint family. If this is the obligation on the members of the joint family to pay such debts contracted by the manager out of their share right, title and interest in the properties and assets belonging to the joint family, would not a duty be cast on the members of the joint family effecting a severance of joint status amongst themselves to give intimation to the outside creditors of the change in the status of the family and the manager or karta thereof so that the outside creditors might not continue any more to deal with the manager or karta as representing the joint family as before on the security of the properties and assets belonging to the joint family which is necessarily involved in the outside creditors dealing with the manager or karta in his capacity as the manager or karta of the joint family? Having regard to the presumptions of union and jointness known to Hindu Law and the presumption of continuance of relation or state of things according to the ordinary law which I have above referred to and the position of the manager or karta as the representative of the joint family as also the fact that the outside creditors deal with the manager or karta as such on the credit and the security of the properties and assets of the joint family and the joint family business, I am of opinion that a duty is cast on the members of the famliy effecting severance of joint status amongst themselves to intimate to the outside creditors who had dealings with the joint family through its manager or karta that there has been a severance of joint status between the members of the family and the manager or karta of the family is no longer the manager or karta thereof so that the outside creditors might not be satisfied merely with the acknowledgments or part payments made by the manager or karta which would be otherwise sufficient in law to save their claims from the bar of limitation. This conclusion, as I have already observed, is in consonance with the principles of the law of partnership recognised in the old Section 264 of the Indian Contract Act, now re-enacted in Section 45 of the Indian Partnership Act, and is not at all opposed to the principles of Hindu Law as regards the joint family and joint family trading firms. I have, therefore, come to the conclusion that unless intimation of the severance of joint status between the members of the joint family and of the fact of the manager or karta being therefore no longer the manager or karta of the joint family were given by the members of the joint family to the outside creditors who had dealings with the joint family through its manager or karta, either by public notice or individual notice in that behalf, the manager or karta of the joint family would, in spite of the severance of joint status between the members of the family, be deemed to continue to represent the joint family and the individual members thereof and would continue to enjoy and exercise all the powers and authorities which he had in his capacity as the manager or karta thereof as regards the affairs of the joint family and the joint family trading firm including the power, to contract debts for the purpose of family necessity and the business of the joint Hindu family trading firm and to make acknowledgments or part-payments in respect of the same so as to extend the period of limitation.

20. It remains to consider how far this conclusion which I have come to is in accordance with or is opposed to the decisions of the other High Courts in India. The case of Ramlal v. Lakhmichand was followed by the Calcutta High Court in Johurra Bibee v. Sreegopal Mister (1876) I.L.R. 1 Cal. 470, and Pontifex J. there held that a joint family property acquired and maintained by the profits of trade was subject to all the liabilities of that trade, that persons carrying on a family business in the profits of which all the members of the family would participate must have authority to pledge the joint family property and credit for the ordinary purposes of the business, and that debts honestly incurred in carrying on such business must override the rights of all members of the joint family in property acquired with funds derived from the joint business. The learned Judge held that those who claimed to participate in the benefits must also be subject to the liabilities of the joint business. In Joykisto Cowar v. Nittyanund Nundy (1878) I.L.R. 3 Cal. 738 F.B Sir Richard Garth C. J. followed the decisions in Ramlal v. Lakhmichand and Johurra Beebee v. Shreegopal Misser and held that on principle there ought not to be any difference between the nature of the liability of an infant admitted by contract into a partnership business and that of one on whose behalf an ancestral trade was carried on by a manager. In Bemola Dossee v. Mohun Dossee (1880) I.L.R. 5 Cal. 792 it appears to have been conceded by Mr. Bonnerjee who appeared for the appellant in the course of the argument that so long as the appellants gave no notice of dissolution to creditors, they would be liable. In the course of his judgment Sir Richard Garth C. J. quoted a passage from Lindley on Partnership and held that (p. 804):

> .Gour Churn certainly had an implied power to borrow on the credit of the Joint family as partners in the firm ; also...that he had the power to borrow on the credit of the joint family, as a joint family for the purposes of the firm. A joint family carrying on a business is necessarily a peculiar kind of partnership.

> The learned Chief Justice thereafter quoted the passage from Ramlal v. Lakhmichand above referred to and held that the manager had at least power, for the necessary purposes of the business, to make an equitable pledge of the joint family property which would bind the plaintiff. All these decisions were referred to by Sir Lawrence Jenkins in Sakrabhai v. Maganlal and were considered by him as indicating the nature and qualities of the ancestral business and laying down the principles pertinent to the same. There is, however, a decision of the Calcutta High Court in Lala Baij Nath Prasad v. Ram Gopal Lachhmi Narayan [1938] 1 Cal. 369, 379 which requires to be considered in this connection. The questions that arose for decision in that case were, whether the loans in suit were taken in the ordinary course of business and for the benefit of the business so carried on and whether the defendants held out the managers of the particular branch concerned as accredited agents and managers of the business carried on by the defendants. Costello A.C.J. reviewed the case-law dealing with joint Hindu family trading business and observed that a joint Hindu family trading business stands on a different footing from other assets and that a joint Hindu family carrying on business is necessarily something in the nature of a peculiar kind of partnership notwithstanding the provisions of Section 5 of the Indian Partnership Act but a joint family trading partnership appears to differ from an ordinary partnership in two respects, viz. (1) it is not dissolved by the death of any

> member, and (2) a member of the family becomes a co-partner by operation of law. The learned Judge, however, went on to observe that "The fact, that there was no outward change was not sufficient because no case of holding out could be made upon the basis of mere silence. There must be some positive act. There was no obligation to give notice of the change of status from that of coparceners to that of co-owners in common. Mere silence is not sufficient. Moreover, estopped could only arise if there was a duty to disclose the altered circumstances"; and he referred to the case of Greenwood v. Martins Bank [1933] A.C. 51, where Lord Tomlin observed as follows (p. 57): " The essential factors giving rise to an estoppel are I think:
>
> (1) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made.
>
> (2)An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation is made.
>
> (3)Detriment to such person as a consequence of the act or omission. Mere silence cannot amount to a representation, but when there is a duty to disclose, deliberate silence may become significant and amount to a representation.

On the facts of the case, however, the learned Judge held that the defendants had held out the managers of the firm concerned as the accredited agents of the family business and as such able to pledge the credit of and attach liability for the debt to all the members of the trading family and that there were acts and statements calculated to induce the lenders to make advances on the credit of all the family assets, and therefore held that in the circumstances of the case the plaintiffs were entitled to succeed against all the defendants. The observations of the learned Judge as regards the joint family trading business as being necessarily something in the nature of a peculiair kind of partnership notwithstanding the provisions of Section 5 of the Indian Partnership Act support the conclusion which I have come to ; but so far as the observations as regards the absence of duty on the members of the joint family to disclose to the outside creditors the altered circumstances are concerned, I respectfully dissent from the same. I have already observed that by the very circumstances of the case a duty is cast on the members of the joint family effecting a severance of joint status amongst themselves to give intimation to the outside creditors of the change in the status of the joint family and the manager or karta thereof, so that the outside creditors might not continue to deal with the manager or karta as before and either lend further monies for the purpose of the joint family business erstwhile carried on by the manager or karta of the family and or accept acknowledgments or part-payments within the meaning of the Indian Limitation Act so as to extend the period of limitation in respect of debts already contracted by the manager or karta of such joint family. Apart from the observations of Lord Tomlin in the case of Greenwood v. Martins Bank above referred to which are pertinent and apply to the circumstances, I may also in this connection refer to a passage from Halsbury's Laws of England, Hailsham edition, Vol. XIII, p. 472, para. 539:

> But the representation of an existing state of things as being of a continuous nature is more than a statement of intention, and one who has made such representation

> cannot after getting rid of that state of things, take advantage of its removal to the prejudice of another who has acted on the representation.
>
> Holding as I do that there was a duty cast on the members effecting the severance of joint status to give intimation to the outside creditors, who had dealt with the joint family through the manager or karta thereof, of the change in the status of the joint family and the managing member or karta thereof, I hold that in the absence of such intimation they would be estopped from pleading the altered circumstances and the joint family would in law be deemed to continue joint and the managing member or karta thereof would be deemed to continue as the managing member or karta thereof invested with all powers to contract debts for the purposes of the joint family and the joint family business and to make acknowledgments or part-payments in respect of the same so as to extend the period of limitation.

21. So far as the Allahabad High Court is concerned, the only decision which is relevant on the present question is that in Debt Dayal v. Baldeo Prasad (1928) I.L.R. 50 All. 982. The question there arose whether an acknowledgment made by one member of the family of a debt due by the family in the course of its family business could be availed of by the creditor as against the entire family, and Bennet J. held that when a joint Hindu family carries on a business, the members thereof are in the position of partners as regards persons dealing with that business. There is no discussion of any principles governing partnerships or joint Hindu family trading firms and the learned Judge applied old Section 251 of the Indian Contract Act to the facts of the case observing: that the acts there were necessary for or usually done in carrying on business of such a partnership and that the acts bound the remaining partners, and went on to observe that when a joint Hindu family carried on a business, they were, in his opinion, in the position of partners in regard to persons dealing with that business. The observations of the learned Judge coincide with the observations which I have-already made in the earlier portion of my judgment and do not militate against the same.

22. There is similarly a decision of the Lahore High Court, in Ghulam Muhammad v. Sohna Mal [1927] A.I.R. Lah. 385, where Jafar Ali J. observed (p. 316(1)):

> As between the partners and the outside world, whatever may be their private arrangements between themselves each partner is the unlimited agent of every other in every matter which is partnership business or which he represents as partnership business and not being in its nature beyond the scope of the partnership. This rule applied equally to joint Hindu family firms and ordinary partnership concerns.
>
> The learned Judge there applied the rule embodied in old Section 251 of the Indian Contract Act to a joint Hindu family firm stating that the same applied equally to the joint Hindu family firms and ordinary partnership concerns. No discussion of the principles governing partnerships as well as joint Hindu family trading firms is available in this decision also. This decision is however in accordance with the conclusion already reached by me in the earlier portion of my judgment that the principles of the law of partnership should be applied also to the joint Hindu family

trading firms in so far as they are not opposed to the principles of Hindu Law applicable to the joint Hindu family trading firms and does not militate against the same.

23. The question whether a joint Hindu family carrying on a business was a firm or its members were partners arose in the Rangoon High Court in v. R.C.T.V.R. Chettyar v. C.A.P.C. Chettyar (1936) I.L.R. 14 Rang. 122. In that case the members of a joint Hindu family firm were sought to be adjudicated insolvents as being partners of the firm upon a petition for insolvency presented against and in the name of the firm. In a considered judgment Page C.J. pointed out the distinction between a joint Hindu family trading firm and a partnership under the Indian Partnership Act. He observed that the only substantial resemblance between the two forms of association would seem to be that in each case the members carried on business together, but that in other material respects the two forms of association appeared to him wholly dissimilar. He emphasised the points of dissimilarity between the two forms of association and observed that it was inapposite and misleading to apply the terms "partnership" and "firm" to the relations inter se of the members of a Hindu joint family which owned and carried on a family business as such. He observed that the personal liability of the member of a Hindu joint family who took an active part in the family business could not be reasonably founded on an estoppel but must be determined by the personal law to which they are subject, because according to their personal law as well as by the universal custom of Hindus, it was the duty of the other members of the family, whether they were adults or minors, to assist the karta in managing the estate and business belonging to the family and no one ought to be misled merely because a member of the family performed his duty to the family into thinking that he had held himself out as a principal liable for any debts contracted for the purposes of the business. He further observed that it was no more reasonable to allow a stranger to set up that he was misled in this way than it would be to permit a person who had contracted with a minor or a Hindu widow or any other person under disability by their personal law to contend that he did not know that they were subject to a personal law which regulated their rights and obligations, and that the decisions which held the members of a joint Hindu family who took part in carrying on the family business personally liable to liquidate the debts of the business were based on a misconception of the basic characteristics of a Hindu joint family and that such members had been inaptly deemed to be partners in a firm. With all respect to the learned Judge, I am unable to agree with the observations1 which appertain to the stranger or outside creditor dealing with the joint family or the joint family business in so far as they might be understood to relieve the members of a joint Hindu family from the obligation to give intimation of the severance of joint status between themselves or the change in the status of the manager or karta thereof to the stranger or outside creditor who had dealt with the joint family or joint family business through its manager or karta. The point which arose for determination before the learned Judge was whether the joint family firm was a firm within the meaning of Section 99 of the Presidency-towns Insolvency Act and whether the members of the joint Hindu family firm could be adjudicated insolvents as being partners in such a firm. No question had arisen before the learned Judge as to the liability of the members of the joint family to strangers or outside creditors who had dealt with the joint family firm through its manager or karta and the powers of the manager or karta. to contract debts or to make acknowledgments or part-payments in respect of the same, after the severance of joint status in the absence of any intimation in that behalf having been given by the members of the joint family to such stranger or outside creditor who had dealt with the

joint family or joint family firm through its manager or karta before such severance of joint status between themselves. I am, therefore, of opinion that the said observations of Page C. J. do not affect the conclusion which I have already come to.

The earliest decision of the Madras High Court in which the cases of Ramlal v. Lakhmichand, Samalbhai v. Someshvar and In the matter of Haroon Mahomed were referred to is Chalamayya v. Varadayya (1898) I.L.R. 22 Mad. 166. In that case three brothers who were the managing members of their joint and undivided Hindu family had borrowed money from the plaintiff for the purposes of the family. The plaintiff had sued the survivor of the brothers and the sons of all the three to recover the amount of the debt and had obtained a decree that the debt was recoverable from the family estate and also personally from the survivor of the three brothers. In so far, however, as he failed to obtain a decree against the other defendants, viz. the sons of the three brothers, he filed an appeal, and the lower appellate Court affirmed the decree of the trial Court. The plaintiff thereupon preferred a second appeal and Subramania Ayyar J. confirmed the decision of the lower appellate Court, observing as under (p. 167):

> No doubt, where it is shown that the contract relied on, though purporting to have been entered into by the manager only, is in reality one to which the other coparceners are actual contracting parties either because they had agreed, before the contract was entered into, to be personally bound thereby, or because they, being in existence at the date of the contract and competent to enter into it, have subsequently duly ratified and adopted it, in that case unquestionably every such coparcener is absolutely responsible. Equally he would be responsible though he did not assent to the particular contract if there has been such acquiescence on his part in the course of dealings, in which the particular contract was entered, as to warrant his being treated in the matter as a contracting party. When however such is not the case, but the contract is of a character such as, under the law, to entitle the manager to enter into, independently of the consent of the other members of the family, so as to bind them thereby, then it is clear that the scope of the manager's power is restricted to, and does not extend beyond, the family property. As regards the other property in the hands of a coparcener no other coparcener, whether he be the manager or not, has any title whatsoever. The legal individuality of a coparcener is not merged in the manager, so far as the coparcener's self-acquired or other separate property is concerned. It follows, therefore, that the liability of the other coparceners1 must; be limited to their interest in the joint estate.

> The learned Judge then discussed the case of Randal v. Lakhmichand and stated that the rule laid down in that case was to be treated as an exceptional rule ; not to be pushed beyond its strict limits. As regards the cases of In the matter of Haroon Mahomed and Samalbhai v. Someshvar he observed that those cases did not decide that every member of a trading family was necessarily liable as a partner. The " decision in the case before him was, however, reached by the learned Judge on the discussion of the principles hereinbefore referred to and he came to the conclusion that the plaintiff was not entitled to a personal decree against the other defendants,

viz, the sons of the three brothers, the only decree to which he was entitled to against them being limited to the extent of their interest in the joint family properties. This decision does not throw any light on the question before me and does not discuss or lay down the principles governing joint Hindu family trading firms.

24. The cases of Samalbhai v. Someshvar and In the matter of Haroon Mahomed came to be considered by the Madras High Court again in The Official Assignee of Madras v. Palmiappa Chetty (1918) I.L.R. 41 Mad. 824. In that case a Hindu father of the Nattukttai Chetti caste had started a business during the minority of his undivided son; it was continued after the son became a major; no public notice of repudiation of partnership (if the son was a partner) was given by the son on his becoming a major ; it was found that the son was helping in the business during his minority and was taking active part in the business after attaining majority. In respect of the debts incurred in the business, both the father and the son were adjudicated insolvents. The son applied to set aside the order of adjudication passed against him, contending that he was not liable to adjudication. It was held by the Court that the business should be held to be joint family business of the father and the son. The majority of the Court held that the members of a joint Hindu family on attaining majority did not necessarily, by virtue of old Sections 247 and 248 of the Indian Contract Act, or otherwise, become personally liable for, and liable to adjudication in respect of, debts contracted in the joint family business during their minority. Sada-siva Ayyar J., however, in the dissenting judgment held that both by the rules of Hindu Law and by old Section 248 of the Contract Act (which also applied to that case), the son was personally liable for all the debts in respect of non-payment of which he was adjudicated an insolvent. He further held that partnership in a family business did not depend upon the consent of the partners in many cases but upon the family being a trading family and the business being conducted for the benefit of the family, persons be into the family from time to time becoming partners as a matter of course. The judgment of the majority of the Court did not subscribe to this view of Sadasiva Ayyar J. and proceeded on the basis that the interest of the minor in the joint Hindu family business, whether existing at the date of his birth or founded during his minority, was acquired by virtue of his belonging to the family and did not depend on any agreement on his part or on his admission by the other members of the family to the benefits of the partnership, and that therefore old Sections 247 and 248 of the Contract Act were not applicable to such a case. They accordingly held that the son was not personally liable for debts contracted during his minority but was only personally answerable for and liable to be adjudicated an insolvent in respect of debts incurred since he attained majority. In the course of their judgment, they discussed the cases of Samalbhai v. Someshvar and In the matter of Haroon Mahomed and observed that in both the cases no reference was made to the provisions of the Indian Contract Act and the cases had been decided on the general principles of Hindu Law applicable to the facts of each case.

25. The nature and incidents of a joint Hindu family trading firm, however, came in for consideration before the Madras High Court in Ramaswami v. Srinivasa [1936] A.I.R. Mad. 94 before a bench constituted by Venkatasubba Rao Offg. C.J. and Venkataramana Rao J. The questions which came up for the decision of the Court were whether the disruption of the joint family affects the liability of the coparceners, and if so, to what extent, and what is the true legal conception of the trade or business, first in relation to the coparcenary, and, secondly, in regard to the strangers who deal with the family. The learned Officiating Chief Justice discussed the

distinguishing features between a partnership and a joint family trading firm, and observed that the true legal position was that as between the coparceners the fact that the family was engaged in trade did not convert it in relation to that trade into a partnership, and that being so, when-the family became severed, the family trade was held by the manager who had in respect of it the same duties and the same powers as in respect of any other similar property of the coparcenary, that his powers were not those of a manager of a joint family but of a co-owner or tenant-in-common in management, in other words, that on division the right he possessed was merely to preserve the trade so that it might not as an item of the family property be destroyed, that if for the purpose of preserving it, it becomes necessary to enter into fresh engagements, he might do so, but that the object must be the preservation of the trade and not the continuing of it. The learned Officiating Chief Justice further went on to observe that it was also incidental to the trade being treated as an asset of the family, that the absence of notice on the part of those dealing with the manager was immaterial, and that a stranger acting on the belief that the family was joint, might turn out to be mistaken, but in dealing with a member of a Hindu family, he did so at his peril. Whilst enunciating the said principle he observed that the members of a trading family might, however, in certain events stand in the relation of partners as regards the third parties with whom they traded ; that they no doubt stood to each other inter se as coparceners, but as regards the outside world, their position in law might be that of partners, that despite the difference in the statement of the rule, the principle was the same, viz. that of liability by ' holding out', a special application of the doctrine of estoppel recognised in old Section 245 of the Indian Contract Act, that the liability in such a case was analogous to that of a partner and arose from the conduct of the coparcener, who was estopped from denying the character he had assumed and on the faith of which third parties might be presumed to have acted ; that there being a partnership from the point of view of the general public, it followed that the persons dealing with it would not be affected by a dissolution of which no notice had been given. (Vide old Section 264, Indian Contract Act). Venkataramana Rao J. also observed as follows (p. 96):

> The question which falls to be decided in this case is what is the effect of a disruption of the joint family on a joint family business carried on by a manager in regard to the liability of the members for debts incurred by him after such disruption ostensibly for the purposes of the business. Before division in status there can be no question that the members of the family are liable for debts incurred by the manager to the extent of their shares in the joint family properties, even though they may not have taken any part in the business. But do they continue to be so liable even after division? Learned Counsel for the appellant says they do unless they have repudiated their liability by a specific or a general notice. I am unable to agree with this contention. The joint family business is an asset of the joint family and when there is a division in status no matter how brought about, there is no obligation on any member to publish a notice of such division. A creditor dealing with the manager of a joint family does so with knowledge of the limitations' on his powers, whether the dealings relate to business or any other asset of the family. The members of a joint family as such are not partners of a joint family business carried on by a manager. The legislature has given effect to this legal conception by way of a statutory declaration in Section 5, Partnership Act.

This decision, whilst correctly pointing out the difference between a partnership and a joint Hindu family trading firm, goes beyond what I have already observed is the true position as regards the strangers or outside creditors who had dealt with a joint Hindu family trading firm through its manager or karta. Both the learned Judges have laid down in terms that there is no obligation on a member of the joint Hindu family to give to a stranger or outside creditor who had dealt with the joint family any intimation of the severance of joint status between the members of the family. I am unable to agree with the said observations of the learned Judges. In the course of their judgments the learned Judges have not discussed the position of strangers or outside creditors who had dealt with the joint family through its manager or karta and had lent and advanced monies to the joint family on the pledge or security of the properties and assets of the joint family nor does their attention seem to have been drawn to the presumptions of union and jointness known to Hindu Law as well as the presumption of the continuity of relation or state of things according to the ordinary law, discussed by me in the earlier portion of my judgment. No doubt a person dealing with the manager of a joint Hindu family does so with the knowledge of the limitations on his powers, whether the dealings relate to business or any other asset of the family, or as is otherwise stated the stranger acting on the belief that the family is joint might turn out to be mistaken, but in dealing with the manager of a Hindu family he does so at his peril. These observations might possibly apply in the case of a person dealing for the first time with the manager or karta of a joint Hindu family and in the event of his lending and advancing monies to such manager or karta it would be his duty to satisfy himself and ascertain whether the manager or karta was in fact occupying that position as regards the joint family on whose behalf he was purporting to act in the matter of the said transaction; but once the stranger or outside creditor has dealt with the manager or karta of the joint family and lent and advanced monies to him for the purposes of the joint family or the joint family business, all the members of the joint family are bound by the said transaction and are liable for the same to the stranger or outside creditor to the extent of their right, title and interest in all the properties and assets of the joint family, apart from their being also personally liable to repay the said loan or debt in the event of their being contracting parties to the said transaction or having acquiesced in the same as observed by Subramania Ayyar J. in Chalamayya v. Varadayya. The position of the stranger or outside creditor who has thus dealt with the joint family through its manager or karta is thus stronger and more favourable than that laid down by both the learned Judges in Ramaswami Chettiar v. Srinivasa Ayyar. Once the liability of all the members of the joint family for the debts contracted by the manager or karta thereof for the purposes of the joint family business is established, the presumptions of union and jointness known to Hindu Law as well as the presumption of continuity of relation or state of things according to ordinary law come into operation and the stranger or outside creditor, is entitled to act on the said presumptions and continue to act as though the said joint family continued to be joint and the manager or karta thereof continued to enjoy the status of such manager or karta until intimation was given by the members of the joint family to him of the severance if any of the joint

> status between themselves and of the manager or karta of the joint family having ceased to be such by reasons of such severance of joint status between themselves, and the principles analogous to those enunciated in the old Section 264 of the Indian Contract Act (now Section 45 of the Indian Partnership Act) do come into operation and are applicable to the facts of the case. I, therefore, dissent from the observations of Venkatasubba Rao Offg. C.J. and Venkataramana Rao J. contained in Ramaswami Chettiar v. Srinivasa Ayyar and hold that in such cases as I have above discussed it is incumbent on the members of the joint Hindu family effecting a severance of joint status between themselves to give intimation to the stranger or outside creditor of such severance of joint status between themselves and of the manager or karta of the joint family having ceased to enjoy the status as such managing member or karta by reason of such severance of joint status between themselves.

26. If this is the true position of law, it was incumbent on the members of the defendants' joint family on February 5, 1938, to give notice to the plaintiff of the severance of joint status between themselves and in the absence of such notice the defendants' joint family should be deemed to have continued as joint and defendant No. 15 should be deemed to have continued to enjoy the status of the manager or karta of the said joint family and as such entitled to make acknowledgments or part-payments in respect of the debt due by the defendants' joint family to the plaintiff so as to extend the period of limitation. If therefore defendant No. 15 executed the promissory note in favour of the plaintiff on February 6, 1938, without any intimation having been given either by defendant No. 15 or the other members of the I defendants' joint family of the severance of joint status between themselves or of defendant No. 15, the manager or karta of the defendants' joint family, having ceased to enjoy the status of such manager or karta thereof, the promissory note dated February 6, 1938, constituted a valid acknowledgment signed by defendant No. 15 in favour of the plaintiff in his capacity as the manager or karta of the defendants' joint family and therefore as the agent duly authorised in that behalf by the defendants' joint family, within the meaning of Section 19 of the Indian Limitation Act.

27. After February 6, 1938, the next document to be considered for the purpose of limitation is the agreement dated March 5, 1938, executed between defendant No. 1 and defendant No. 15. In that document, as I have already stated, the sum of Rs. 8,005 was shown as the aggregate liability of the firm of Bhaga Bhaushet and Atmaram Hari to the plaintiff and was taken over by defendant No. 1 and defendant No, 15 as shown in the schedules A and B respectively annexed thereto. This agreement constitutes a definite and unequivocal acknowledgment of liability in respect of the said debt due by the defendants' joint family to the plaintiff but would only serve to save the bar of limitation as against defendant No. 1 and defendant No. 15, they being the only signatories to that document, though no doubt the sons of defendant No. 1 and the sons of defendant No. 15 would also be liable to the extent of their interest in the joint family properties by reason of the pious obligation of the Hindu sons to pay the debts of their fathers not being avyavaharik, i.e. illegal or immoral. After the partition suit, No. 347 of 1939, came to be filed in this Court between the members of the defendants' joint family ; a consent order was taken on the notice of motion for the appointment of a receiver of the properties belonging to the defendants' joint family on April 13, 1939. The consent terms were signed by the respective counsel for the parties and an order was accordingly drawn up

on April 13, 1939. The order, as I have already stated, provided that the shops and tobacco warehouses and pan vakhar mentioned in exhibit B to the plaint in that suit should be conducted by the respective parties them in possession thereof but that they should not deal with the assets of the same except in the ordinary course of business and for payment of liabilities agreement dated March 5, 1938, and made between defendant No. 1 and defendant No. 15. The said consent terms signed by counsel for the respective parties thus constituted1 an acknowledgment inter alia of the debt due by the defendants' joint family to the plaintiff in the sum of Rs. 8,055 and was a valid acknowledgment within the meaning of Section 19 of the Indian Limitation Act signed by the agents duly authorised in that behalf of the parties to that suit, viz. the various members of the defendants' joint family. This consent order was dated April 13, 1939, and being an acknowledgment of liability in respect of the monies due at the foot of the promissory note or the debt secured thereby signed by the agents duly authorised in that behalf of the various members of the defendants' joint family within the period of limitation, started a fresh period of limitation from April 13, 1939, with the result that the present suit filed by the plaintiff to recover the amount together with interest accrued due thereupon on April 22, 1941, was well within time.

28. The consent terms arrived at between the parties in the partition suit No. 347 of 1939 on November 22, 1939, which were also signed by counsel for the respective parties and which were drawn up in the consent preliminary decree dated November 22, 1939, provided that the Commissioner for taking accounts do pay the debts and liabilities of the joint family first and then the costs provided for in Clause 12 thereof; also that the Commissioner for taking accounts should ascertain the debts and liabilities of the joint family as on February 5, 1938. In accordance therewith a statement of accounts of the liabilities of the joint family estate was filed by defendants Nos. 15 to 18 through their attorneys Messrs. Manohar & Co. on October 7, 1941, item 53 whereof showed the amount due by the defendants' joint family to the plaintiff at the sum of Rs. 8,035. No objection was taken to the statement of accounts of the liability of the joint family estate and in particular to item 53 thereof appertaining to the debt due by the defendants to the plaintiff as aforesaid. These consent terms dated November 22, 1939, signed by the respective counsel of the parties, viz. the various members of the defendants' joint family also constituted an acknowledgment validly signed by the duly authorised agents of the various members of the defendants' joint family in that behalf before the expiry of the period of limitation and started a fresh period of limitation on November 22, 1939, with the result that the present suit by the plaintiff on April 22, 1941, was well within time.

29. Even if I may be wrong in my appreciation of the legal position as discussed above in regard to the defendants' joint family to be deemed to continue as joint and defendant No. 15 the manager or karta of the defendants' joint family to be deemed to continue as the manager or karta thereof, in the absence of intimation to the contrary having been given to the plaintiff by defendant No. 15 or the other member* of the defendants' joint family, on and after February 5, 1938, there is a further aspect of the case which really supports the plaintiff. As I have already stated in the earlier portion of my judgment the parties to the partition suit No. 437 of 1939 arrived at consent terms on November 22, 1939, according to which the partition effected on February 5, 1988, was set aside and a fresh agreement was arrived at between them whereby a partition was effected between the members of the defendants' joint family, though certain arrangements which had been arrived at between them on February 5, 1938, were confirmed and dealings with the properties and assets of

the joint family by the various members thereof were accounted for as from February 5, 1938. The said consent terms, in my opinion, treated the defendants' joint family as joint up to November 22, 1939 and validated all the transactions entered into by the respective members of the defendants' joint family as having been entered into by them on behalf of the whole family, though so far as accounting inter se was concerned, the several members of the family were considered responsible for their respective dealings with items of joint family properties and assets which had come into their possession since February 5, 1938. The acknowledgment of liability made by defendant No. 15 in respect of the debt due by the defendants' joint family to the plaintiff by executing the promissory note on February 6, 1938, was thus a valid acknowledgment within the meaning of Section 19 of the Indian Limitation Act, and the consent terms dated November 22, 1939, signed by the respective counsel for the parties constituted a further acknowledgment of liability to the plaintiff within the period of limitation bringing the suit filed by the plaintiff on April 22, 1941, well within time as already pointed out above.

30. Under these circumstances, it is not necessary to consider whether there was an acknowledgment of liability within the meaning of Section 19 of the Indian Limitation Act contained in paras 1, 4, 5 and 7 of the written statement of the defendants Nos. 1 to 9 as contended by Mr. Laud. It is! also unnecessary to consider the effect of the endorsement made by defendant No. 15 on January 5, 1941, at the foot of the promissory note dated February 6, 1938, as regards the part-payment of Rs. 25 towards the principal amount due under the promissory note. If at all, that endorsement of part-payment would be of avail against defendant No. 15 and his sons by reason of the pious obligation of the Hindu sons to pay 'the father's debts which are not avyavaharik, i.e. illegal or immoral, but would not save the suit from the bar of limitation if any as regards the other defendants, because by January 5, 1941, the plaintiff had certainly known of the severance of joint status between the members of the defendants' joint family by the institution of the partition suit No. 347 of 1939.

31. I, therefore, hold that the plaintiff's suit is not barred by the law of limitation and answer the only issue raised by Mr. Banaji, viz., "Whether the plaintiffs suit against defendants Nos. 1 to 4 is barred by the law of limitation?" in the negative. In the result, there will be a decree in favour of the plaintiff against defendant No. 15 personally and against the other defendants limited to the extent of their share, right, title and interest in the properties belonging to the defendants' joint family for the sum of Rs. 8,055 with interest thereon at the rate of twelve annas per cent, per month from February 6, 1938, till judgment, costs of this suit and interest on judgment at the rate of six per cent, per annum till payment.