PETITIONER:
NANCHAND GANGARAM SHETJI

Vs.

RESPONDENT:
MALLAPPA MAHALINGAPPA SADALGE

DATE OF JUDGMENT30/01/1976

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
FAZALALI, SYED MURTAZA

CITATION:
1976 AIR 835 1976 SCR (3) 287
1976 SCC (2) 429

ACT:
Joint Hindu family If duty cast on members to inform creditors by general notice regarding disruption of joint Hindu family Creditor-Duty to inquire about the capacity of executant of a document.
Partnership Act, 1932-Sections 4 and 5-Difference.
Limitation Act, 1908-Section 21(3)(b) "Manager of the family for the rime being"-Meaning of-Erstwhile karta-If could keep an old debt alive and extend limitation against all the members of joint Hindu family.

HEADNOTE:
The plaintiff-appellant had business dealings with the joint family of the defendants. He had instituted a suit claiming a certain sum of money from the defendants, one of the grounds being that even if the defendants proved that there had been a partition in the family, the family was still liable for the dues pertaining to the ancestral business carried on by all the defendants either as members of the joint Hindu family or as partners of a firm. Defendant 3 (respondent) stated that there was disruption of the joint family status on November 4, 1945. when defendants 1 and 2 and his deceased father unequivocally expressed their intention to separate and divided their movables. He denied that defendants 1 and 2 had ever acted as managers of the joint family.
The trial Court and the High Court concurrently found that the joint family of the defendants had disrupted on November 4, 1945 and that no joint family business was in existence on the date when the last dealing of the plaintiff with the defendants took place.
On appeal to this Court, it was contended that even if the joint family stood disrupted from November, 1945, in the absence of public notice by defendants 1 and 2 regarding the disruption of the joint family, the acknowledgements made by them as karta of the joint Hindu family would be binding on the erstwhile joint family under s. 45 of the Partnership Act, 1932.
Dismissing the appeal,
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HELD: (1) It is the duty of the creditor to ascertain whether the person making the acknowledgement still holds

his representative capacity as karta of the family. The law does not cast any duty upon the members of the family to inform the creditors by a general notice about the disruption of the family. If the creditor fails to make an enquiry and satisfy himself about the capacity of the executant to represent the family at the time of making the acknowledgement, he does so at his own peril. Disruption of the joint family status puts an end to the representative capacity of the karta and any acknowledgement of a debt made by him after such disruption cannot save the creditor's claim from becoming time barred against the other members. [298B-C]

Pramod Kumar Pati v. Damodar Sahu, ILR 1953 Cuttack 221; Rengaswami Ayyangar v. Sivprakasem Pillai, ILR 1942 Mad. 251 (F.B.); Mutayala Ramachandrappa v. Mutayala Narayanappa, AIR 1940 Mad. 339, approved.

Kashiram Bhagshet Shete v. Bhaga Bhanshet Redij A.I.R. 1945 Bom. 511 over ruled.

(2)(a) The Legislature has excluded the joint Hindu trading families from the operation of the Partnership Act. Section 4 defines partnership as a relation between persons who have agreed to share the profits of a business, and according to s. 5 the Act governs only that relation of partnership which arises from contract and not from status such as the one obtaining among the members of a joint Hindu family' trading partnership, [297C-D]

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(b) The words "manager of a family for the time being" occurring in s. 21(3)(b) of the Limitation Act. 1908. indicate that at the time when the acknowledgement was made and signed, the person making and signing it, must be the manager of a subsisting joint Hindu family. If at the relevant time the joint Hindu family, as such, was no longer in existence, any acknowledgement made by the erstwhile karta of such family cannot keep the debt alive and extend limitation as against all the members of the family, his representative capacity as karta being co-terminus with the joint status of the family. [297F-G]

(c) Coparceners do not derive their title through the karta of the coparcenaty. In the instant case defendants 1 and 2 did not fulfil the requirements of sub-s. (1) of s. 21 of the Limitation Act. [298A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1896 of 1968.

(Appeal by special leave from the judgment and order dated the 21st September, 1962, of the Mysore High Court in Regular Appeal (B) No. 287 of 1956).

H. B. Data and P. C. Bhartari for the appellant.

S. T. Desai and Naunit Lal for respondents 3 & 4.

The Judgment of the Court was delivered by

SARKARIA, J.-This is a plaintiff's appeal by special leave directed against a judgment of High Court of Mysore. The following pedigree table will be helpful in understanding the facts leading up to this appeal:

Mahalingappa
(died in 1922)

Mallappa Appa Saheb — Neelkanth
Def. No. I — Def. No. 2 (died on 8-7-46)
Chandrakant — Smt. Balabi
Def. No. 3 (wife of Neelkanth Def.No.4).

The respondents are Hindus governed by Mitakshra School

of Hindu Law. Mahalingappa, the prepositus of the joint family died in 1922, survived by three sons, namely, Malappa, Defendant 1, Appa saheb, Defendant 2, and Neelkanth (The sons are hereafter referred to as 'M','A' and 'N'), Mahalingappa and his sons constituted a joint Hindu family. The family was trading in tobacco. Mahalingappa, J as Karta was managing the joint family business. After his death, his eldest son. Neelkanth, father of Chandrakant, Defendant 3, began to look after the management of the family business 'N' also started C. N. Tennis Bidi Factory in the name of his son, Chandrakanth, in 1942 or thereabout. 'N' died on July 8, 1946. Thereafter, 'A' (Defendant 2) continued and managed the joint family business and the family concerns with the consent of the other members. After 1951, the family business was managed by 'M' (Defendant 1).

The appellant had business dealings in tobacco and money dealings with the Defendants' joint family. There used to be periodical verification of accounts and acknowledgements were made from time to
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time by the Manager of the family. The plaintiff's accounts were burnt in fire on October 22, 1949 and he had to reconstruct the accounts from available information and' documents.

On April 15, 1953 accounts were taken, and the amount due from the defendants family to the plaintiff was worked out and verified The accounts thus stated were acknowledged and signed by Defendant 1 and by Defendant 4, as guardian of her minor son, Defendant 3. A balance of Rs. 69,465/15/- was found due to the plaintiff from the defendants.

With the preceding allegations, the plaintiff on January 28, 1954 instituted the suit for the recovery of Rs. 75,000/-, comprising of Rs. 69,465/15/-, as principal, plus interest at 12 per cent per annum Subsequently by an amendment of the plaint, he added an alternative ground that if the Defendants proved that there had been a partition in the family, they were still liable for the dues pertaining to the ancestral business carried on by all the defendants either as members of the joint Hindu family or as partners of a firm.

Defendants 1 and 2 in their joint written statement admitted that there was an ancestral tobacco business of the family managed by 'N' till his death in 1946; that after N's death, the family business was managed by them (M & A) and that all the defendants were jointly liable for the plaintiff's claim. The defendants denied that there was ever a partition of the joint family. They however conceded that a deed of partnership, an agreement and a partition award had been brought into existence from time to time with the sole object of lessening the burden of income-tax, and they were not intended to be acted upon. It was added that after the interim attachment of the property, Defendant 3, taking advantage of these bogus documents, obtained an ex parte decree to show that there had been division of the joint family, and that this decree was not opposed by the answering defendants because they were assured that it would not be executed. They admitted that the appellant's claim was partially true, but denied correctness of the total balance claimed as due. They further averred that the suit was time-barred as the acknowledgement relied on by the plaintiff was not legal and could not extend limitation, that interest was wrongly calculated; that, if they (Defendant 1 and 2) were held liable, they should be allowed to pay in easy instalments.

Defendant 3 filed a separate written statement. He

resisted the plaintiff's claim, traversed the allegations in the plaint, and denied that there was any acknowledgment made on his behalf on April 15, 1953 by his mother, Defendant 4. In the alternative he pleaded that she had no authority to acknowledge the debt so as to bind him as he was then a minor. Defendant 3 further stated that there was a disruption of the joint family status on November 4, 1945 when M, A and N unequivocally expressed their intention to separate, and divided the movables, and thereafter, a decree for partition of the immovable property of the family was passed in 1949 on the basis of an arbitration award. Defendant 3 asserted that this decree had been acted upon by the parties. He denied that Defendants 1 and 2 had ever acted manager of the joint family with the consent of the other members,

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and added that this question could not- arise because of the earlier division of the family.

Defendant 4 in her written statement denied the plaintiffs' claim and supported the contentions raised in his written statement by Defendant 3. She stated that Defendants 1 and 2, had taken her thumb impressions on certain papers on the representation that they had been properly managing the Tennis Bidi Factory which had fallen to the share of her husband. She was never informed of the contents of the documents by the Defendants, who took undue advantage of her illiteracy.

The trial court held that the joint family had disrupted in 1945 and the plaintiff was aware of this fact; that the acknowledgements of the debt had been made by Defendants 1 and 2 and not by Defendant 3, and on that account the suit was within time only as against Defendants 1 and 2; that Defendant 3 had on attaining majority repudiated his liability as partner; that the thumb-impressions of Defendant 4 on the acknowledgement had been taken by practising fraud; that in any case defendant 4 had no authority to acknowledge the debt on behalf of her minor son. The Court, however, upheld the appellant's contention that the old accounts had been destroyed in fire and that the plaintiff was entitled to interest at 12 per cent per annum. on these findings, the trial court decreed the plaintiff's claim in toto against Defendants 1 and 2 but dismissed it against Defendants 3 and 4.

Against that judgment and decree of the trial court, the plaintiff preferred an! appeal to the High Court. The High Court has affirmed the findings of the trial court and dismissed the appeal.

Hence this second appeal by the plaintiff.

Defendants 1 and 2 did not appeal against the decree of the trial court which had consequently become final against them.

It is common ground between the parties that during the life-time of Mahalingappa, the family consisting of Mahalingappa and his sons, was a joint Hindu family trading in tobacco. It is further not disputed that after the death of Mahalingappa, the surviving co-parceners continued to be joint and Neelkanth, the eldest son of Mahalingappa, managed the family business as Karta till November 4, 1945.

The first matter in controversy is, whether on November 4, 1945, on account of an unequivocal declaration of an intention to separate made by the three sons of Mahalingappa, there was a disruption of the joint family status ? The courts below have concurrently answered this question in the affirmative.

Mr. Datar, appearing for the appellant contends that

this finding of the courts below that there was a division in the family on November 4, 1945, was not based on any evidence whatever and is consequently, unsustainable in law.
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We are unable to accept this contention. The finding is based on good evidence which has been found credit worthy after due consideration by the two courts. Firstly, there is a recital of the fact of division on November 4, 1945, in the partnership deed, Ex. 197, dated October 25, 1946. This deed has been written on a general stamp paper of the value of Rs. 30. The date of the purchase of the stamp paper accords with the date of the execution of the deed. This document therefore, could not have been brought into existence subsequently. Secondly, there was an endorsement on the Income-tax Return Ex. 309, relating to the previous year ending on November 4, 1945, that at the end of the year there has been a change in the status of the family. Thirdly, there is the Arbitration Award (Ex. 294) dated November 3, 1948, followed by the decree (Ex. 295). This award is a registered document. The material recitals in this document are as under:

> "The plaintiff (Chandrakant Nilkanth) and the defendants Nos. 1, 2 and 3 (Mallappa, Appasaheb and Basawabai, widow of Mahalingappa) were members of joint family. During the lifetime of the plaintiff's father, he and the defendants Nos. 1, 2 and 3 were living joint and all the three persons carried on the business of the joint family. Thereafter as the minds of the plaintiff's father and of the defendants Nos. 1 and 2 were prejudiced on account of some domestic reasons, they began to live separately in the year 1945. Thereafter they took accounts of the transactions, with desire to get their immovable and movable properties and other business partitioned and got the capital amount in that business partitioned on 4th November 1945. So also they effected partitions in the other movables and the ornaments etc., of the family
>
> Now the defendants Nos. 1 and 2 are objecting about the maintenance to be given to the defendant No. 3 (widow of Mahalingappa) as per agreement deed
>
> The contentions of the defendants Nos. 1 and 2 are as follows:
>
> We and our deceased eldest brother Sri Nilkanthappa were living joint. It is true that on 4th November 1945 we all three together have taken the accounts of the business and have made divisions in the capital of the business. It is true that accordingly we have proportionately divided the remaining movable articles and the ornaments etc. and have taken the same...."

The award bears the signatures of the three arbitrators, and on its basis the court passed a decree on August 9, 1949. That suit was instituted by Chandrakant, and Basawwa, widow of Mahalingappa, Suryakant, an illegitimate son of Nilkanth, Mallappa Mahalingappa Sadalge and Appasaheb were impleaded as defendants. Under the award, provision was made for the maintenance of Smt. Basawwa and the residence of Suryakant, the illegitimate son of Nilkanth.
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The conclusion based on the above documentary evidence was reinforced by the courts below with admissions made by Defendants 1 and 2, in cross-examination, and also with an inference drawn against the plaintiff and Defendant 1 on account of the non-production of the account-books. In our opinion, the court below were justified in drawing the

inference because Defendant 1, as is apparent from his written statement, is colluding with the plaintiff, and all circumstances suggest that these account-books must be with defendant 1.

The case of Defendant 3 is that on November 4, 1945, the accounts of the joint family were worked out and closed. It was found that there was a capital balance of Rs. 64,023/11/- which was equally divided among the three brothers and the fact of this division was noted in the account books which were in the possession of Defendant 1. In the witness-box, Defendants 1 and 2 admitted that on November 11, 1945, each of the brothers got Rs. 21,340/3/9 and credit entries to that effect were made in the khata of each brother in the account-books of the shop.

Defendant 3 by an application (Ex. 169) called upon Defendant 1 to produce in court the account-books, in his possession. Notice of this application was received by Defendant's Counsel on July 18, 1955. Despite this notice defendant 1 did not produce the account books when he appeared in the witness-box on July 21, 1955. He made a lame excuse that the account books had been given to Javali pleader after the service of summons in this suit on him (defendant 1) because that pleader had asked him to bring the books containing the plaintiff's accounts. But the defendant gave him the books of the Bidi Factory and not of M. B. Sadalge shop. Defendant 1, in cross-examination, clearly admitted that he had given to Javali pleader only those account books which contained the plaintiff's Khata "and not of previous years". By any reckoning, this means that he did not hand over the account books relating prior to the years 1949 to Javali Pleader. Admittedly, after the death of Nilkanth. he was managing the business upto 1950, and, as such, was supposed to be in possession of the account-books. The courts below were there fore, right in rejecting the explanation given by him for non-production of the account-books. The explanation regarding the non production of the books, given by defendant 2, who had managed the business after 1951, was equally unsatisfactory and was rightly discarded.

In the light of what has been said above, it cannot be held that there was no legal evidence before the courts below to base the finding that the joint family had disrupted on November 4, 1945.

It is next contended by Mr. Datar that even if there was some declaration of separation in 1945 and subsequently a decree for partition based on an award was passed in 1949, then also, such declaration, award and decree were never acted upon. It is submitted that in holding to the contrary, the High Court has committed several errors of record and misconstrued important documentary evidence.

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According to Mr. Datar, the under-mentioned documentary evidence unmistakably shows that the declaration of 1945, the award of 1948 and the partition decree of 1949 were not acted upon:

(1). Affidavits Exhts. 221, 247 and 248 sworn on July 20, 1946, before a Magistrate by Defendants 2, 4 and 1 stating that they are members of a joint Hindu family and Defendant 2 is the manager of the family. In the affidavit Ex. 247, Smt. Balabai gave her consent to the management of the affairs of the joint family by defendant 2.

(2). Application dated August 13, 1946 (Ex. 182), by Defendant 1 to Sales-tax officer for transfer and registration of the licence, and application Ex. 208, dated September 30, 1946 made by defendants 1 and 2 on their

behalf and on behalf of Chandrakant Defendant 3 informing the City Surveyor about the death of Neelkanth and requesting him to enter the Khata in the names of all the three defendants 1 to 3.

(3) Income-tax returns Exhs. 309 to 314 filed after the death of Neelkanth.

(4). Resolution, Ex. 335, passed by the Board of Directors in the meeting held on July 30, 1946 permitting defendant 2 to redeem, in the capacity of Karta of the joint family, goods pledged with the Nipani Branch of the Bank by Neelkanth deceased.

(5). Ex. 147, statement, dated September 26, 1953, by defendant 3 requesting the City Surveyor, Nipani that his joint share in Nipani Revision Survey Nos. 1254 and 1264 may be cancelled and the name of defendant 1 may be entered again for both the numbers. Emphasis is on a sentence in this statement to the effect: "Two months have passed since the said partition".

In accordance with this statement. the mutation Ex. 263, was attested.

Both the courts below have fully considered this evidence, along with other evidence, and come to the conclusion that these documents do not discount or alter the fact that the joint family had disrupted on November 4, 1945. The High Court has given reasons why the evidence furnished by the deed of partnership (Ex. 197) and the Arbitration Award, (Ex. 294) can be safely accepted.'

In regard to Exs. 221, 247 and 248, the High Court has said that there is no evidence as to for what purpose these affidavits were sworn to and has rightly emphasised that in the absence of such evidence, it is difficult to draw any inference about the implications of their contents. Regarding the affidavit Ex. 247, purporting to have been sworn by Smt. Balabai, the High Court has said that she must have been mentally depressed being in mourning on account of the death of her husband which occurred only 12 days earlier; that she was an illiterate woman who thumb-marked whatever documents were presented to her, without understanding its contents. In this connection, the High Court referred to the statement of defendant 1, wherein he has admitted that during defendant 3's minority, defendant 1 and defendant 2 were the only persons who looked after the business and defendant 4 never objected to whatever they did. and that they used
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to take defendant 4's thumb-impression whenever they thought it necessary in connection with the dealings of M. B. Sadalge shop.

As regards the applications Exs. 182 and 208, the High Court said, there was nothing inconsistent in the recitals of these documents, to show that there was no partition of the joint family. The recital in Ex. 208 was found to be too technical to spell out the full legal implications of the words "in the joint family".

Referring to the Income-tax returns Exs. 310, 311 and 314, submitted on March 15, 1948, November 12, 1949 and February 13, 1954, respectively, the High Court noted that these refer to the accounts of the two concerns and contain somewhat different description in the management. In Ex. 310, relating to the year ending October 24, 1946, it is stated that N' and defendants 1 and 2 were Kartas of the family. In Ex. 311, defendant 2 is mentioned as the manager of the "old Hindu Undivided Family". Similarly, Ex. 314, purports to have been filed by the H.U.F. relating to the year 1949-50 but this was filed on Feb. 13, 1954 after the

institution of this suit. The income-tax returns Ex. 312 and 313 relate to the previous years ending on 12-11-1947 and 22-12-48. Ex. 312 was submitted on December 26, 1949 and Ex. 313 on December 22, 1953, both by defendant 2. The status of the assessee in these two returns is mentioned as "Firm".

Ex. 315, is the income-tax return relating to the income-tax year 1948-49, the previous year of which ended on November 12, 1947. It was filed by defendant 4 as guardian of her minor son, defendant 3, on December 22, 1949. The status of the assessee therein is shown as 'Individual'. It relates to the business which was being run under the style of M/s. M. B. Sadalge. It is mentioned in this return that each of the three defendants .1, 2 and 3 has 1/3 share in the business Ex. 316 is the order of the Income-tax officer passed on June 20 1950 wherein it is stated that 1/3 share of defendant 1 in the profits of this firm was assessed on that date.

Ex. 309 is the income-tax return relating to the previous year ended on November 4, 1945. It was filed by defendant 2 in 1946, after Neelkanth's death. The High Court has attached great weight to an endorsement on this return, which is to the effect, that there had been a change in the family status. at the end of the year. This endorsement has been omitted from the printed copy of Ex. 309. Consequently, at one stage, it was maintained by the counsel for the appellant that in repeatedly referring to this endorsement the High Court had committed an error of record. We therefore, sent for the original. We find that this endorsement is very much there in the original. This endorsement was a valuable piece of evidence to show that, in fact, there had been a disruption of the joint family status at the end of the previous year, 1944-45, on November 4, 1945.

Thus the evidence furnished by the income-tax returns was conflicting. But the aforesaid endorsement on Ex. 309 was a clincher. It was a statement made ante litem motam. It confirmed the testing of
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Defendant 2 that the partition had taken place in 1945 and this tilted the balance against the contention of the plaintiff. In such evidentiary value, it out-weighs the income-tax returns, Ex. 310, 311 and 314, in which the status of the assessee is shown as H.U.F. The High Court was therefore, not wrong in holding that all these documents taken together do not show "that the family of the defendants had continued to be joint."

Discussing the resolution (Ex. 335)of the Board of Directors passed on July 30, 1946, the High Court said that this resolution was passed only 22 days after the death of Neelkanth and therefore, there was nothing unusual if all the members authorised defendant 2 to redeem the pledged goods as manager of the joint family.

In our opinion, it was not' unreasonable to hold that the recital in this resolution with regard to defendant 2 being the authorised manager of the joint family, was made as a matter of expediency, and did not discount the case of defendant 4 that the joint family had disrupted on November 4, 1945.

The High Court found that the racital in Ex. 143, that the partition had taken place two months prior to this application, was obviously a mistake, as it was nobody's case that the partition had taken place in 1953. This inference also was not implausible. This document contains other palpable errors of a similar nature. For instance, therein the age of defendant 3 is mentioned as twenty years,

while he was hardly eighteen.

The High Court found that the documentary evidence furnished by the partnership deed (Ex. 197) dated October 25, 1946, the award (Ex. 294) dated October 30, 1948, and the decree (Ex. 295) dated September 15, 1949, passed on its basis was entirely reliable. It further found that these documents had been acted upon. In this connection, the High Court, 'rightly relied upon the admissions of defendant 1 in cross-examination. In the witness-box, defendant 1 had conceded that all the immovable property that had been allotted to defendant 2 under the award had been sold away by him, and that pursuant to the award, Rs. 7,000/- had been paid to Heerabai and her son, Suryakant. Defendant 1 further significantly admitted that on October 25, 1946 Rs. 16000/- and odd were to the credit of defendant 3 in the account books of M. S. Sadalge Shop. By virtue of the receipt, Ex. 167, dated August 9, 1949, defendants 1 and 2 acknowledged the deposit of Rs. 16005-15-0 in favour of the minor Defendant 3, payable with interest at Rs. 6/- per cent per annum. Defendant 1 admitted the correctness of the contents of this receipt. It is undisputed that subsequently, defendant 3 has not only obtained a decree on the basis of this receipt against defendant 1, but has taken out its execution.

The High Court has also dismissed the effect of the agreement (Ex. 99) which was executed between defendants 1, 2 and defendant 4 as the guardian of the minor, defendant 3 on April 12, 1950. The main object of this agreement was to safeguard the interests of the minor in the management of the two partnership businesses, namely,
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M. B. Sadalge Shop and Tennis Bidi Factory in the name of Chandrakant Neelkant Sadalge. By this agreement, defendants 1 and 2 were called upon to credit to the business whatever amounts they had spent from out of the partnership assets. The power of each of the defendants with regard to withdrawal of funds from partnership chest for personal expenses, was also restricted. This arrangement continued to be in force till the partnership was dissolved by another registered deed on April 20, 1951.

Reference has already been made to Ex. 316, an order dated June 20, 1950, of the Income-tax officer showing that defendants 1, 2 and 3 were being assessed on the basis that each of them had 1/3rd share in the business. In a joint Hindu family business, no member of the family can say that he is the owner of one-half, one-third or one-fourth. The essence of joint Hindu family property is unity of owner ship and community of interest, and the shares of the members are not defined. Similarly, the pattern of the accounts of a joint Hindu family business maintained by the Karta is different from those of a partnership. In the case of the former the shares of the individual members in the profits and losses are not worked out, while they have to be worked out in the case of partnership accounts.

In view of all that has been said above, we are of opinion that the concurrent finding of the courts below to the effect, that the joint Hindu family of the defendants had disrupted on November 4, 1945, does not suffer from any legal infirmity or gross error which would justify our interference in this appeal by special leave. We therefore, take it that no joint Hindu family of the defendants, nor any joint business of such a family was in existence either on October 15, 1949 when the last dealing (vide Ex. 394) of the plaintiff with defendants 1 and 2 took place, or when on April 15, 1953 the accounts were stated and admitted.

Indeed, on-the date, April 15, 1953, on which the plaintiff's cause of action arose, even the partnership was not in existence, the same having stood dissolved since April 20, 1951.

Mr. Datar next contends that even if the joint status of the family stood disrupted from November, 1945, then also, on the principle of s. 45, Partnership Act, the acknowledgements made by defendants 1 and 2, representing themselves, jointly or severally, as Karta of the joint Hindu trading family, would, in the absence of public notice to the traders in general or particular notice to the plaintiff, be binding of all the erstwhile members of the joint family. Reliance for this contention has been placed on a Single Bench judgment of the Bombay High Court in Kashiram Bhagshet Shete v. Bhaga Bhanshet Redij(1).

As against this, Mr. Desai submits that Kashiram's case (supra) does not lay down the law correctly. Counsel maintains that the contrary view taken by the other High Courts in these cases is sound : Pramod Kumar Pati v. Damodar Sahu(2); Rengaswami Ayyanagar v.

(1) A.I.R. 1945 Bom. 511 (2) I.L. R. 1953 Cuttack 221.

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Sivyurakasam Pillai(1); Muthyala Ramachandrappa v. Muthyala Narayanappa (2) .

Kashiram's case (supra) decided by an eminent single Judge certainly supports the proposition propounded by Mr. Datar. Applying the principle of s. 45 of the Partnership Act, 1932, the learned Judge held that unless intimation of the severance of joint status between the members of the joint family is given to the outside creditors who had dealings with the joint family through its karta, either by public notice or individual notice in that behalf, the karta would be deemed to continue to represent the family and to have power to incur debts for family necessity and to make acknowledgements or part-payments in 's respect of the same so as to extend the period of limitation. With great respect to the learned Judge, we do not think that this is a correct enunciation of the law on the point. Firstly, the legislature has, in its wisdom, excluded joint Hindu trading families from the operation of the Partnership Act. Section 4 of that Act defines 'partnership' as "the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all". Section 5 further makes it clear that this Act governs only that relation of partnership which arises from contract and not from J status such as the one obtaining among the members of a joint Hindu family trading partnership. Secondly, the question whether an acknowledgement made by the karta of an erstwhile joint Hindu family after its severance, would extend limitation against all the former members of that family, turns primarily on an interpretation of clause (b) of sub-section (3) of s 21 read with s. 19 of the Limitation Act, 1908. Clause (b) of s. 21 (3) provides:

> "Where a liability has been incurred by or on behalf of a Hindu undivided family as such, an acknowledgement 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 key words in this clause are the manager of the family for the time being'. These words unerringly indicate that at the time when the acknowledgement is made and signed, the person making and signing it, must be the manager of a subsisting joint Hindu family. If at the

relevant time the joint Hindu family as such was no longer in existence because of division, or disruption of its joint status, any acknowledgement made by the erstwhile karta of such family cannot keep the debt alive and extend limitation as against all the members of the family, his representative capacity as karta being co-terminus with the joint status of the family.

Explanation (II) to s. 19 lays down that for the purpose of this section "signed" means signed either personally or by an agent duly authorised in this behalf. Section 21(1) provides that the expression "agent duly authorised in this behalf" in ss. 19 and 20 shall in the case of a person under disability include his lawful guardian or manager or an agent duly authorised in this behalf. It is well settled that

(1) I.L.R. 1942Mad. 251 (F.B.) (2) A.I.R. 1940 Mad. 339.

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coparceners do not derive their title through the karta of the coparcenary. Defendants 1 and 2 do not fulfil the requirements of this sub-section.

It is therefore the duty of the creditor to ascertain after due enquiry whether the person making the acknowledgement still holds his representative capacity as karta of the family. The law does not cast any duty upon the members of the family who do not figure in the endorsement or writing admitting the debt to inform the creditor by a general notice about the disruption of the family. If the creditor fails to make an enquiry and satisfy himself' about the capacity of the executant to represent the family at the time of making the acknowledgement, he does so at his own peril. Disruption of the joint family status, as already noticed, puts an end to the representative capacity of the karta and any acknowledgement of a debt made by him after such disruption cannot save the creditors' claim from becoming time barred against the other members.

The above enunciation of the law is in accord with the view taken by a Full Bench of the Madras High Court in Rangaswamy Ayyangar v. Sivprakasam Pillai (supra) and by a Division Bench consisting of Varadachariar and Abdur Rahman JJ. in Muthyala Ramachandrappa v. Muthyala Narayanappa (supra), and by a Division Bench of the Orissa High Court in Pramod Kumar Pati v. Damodar Sahu (supra).

We approve of the law enunciated on the point by the High Courts in these cases.

No other point has been argued before us in this appeal which fails and is dismissed with costs.

P.B.R. Appeal dismissed.

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