1864.
TAYLOR v. BROOKE.

is it may be difficult precisely to define. The best practical rule seems to be that which was suggested in the clear and able evidence of the Honorable Mr. Scott, Mr. Walter Cassels, and Mr. Brooke, the defendant, viz., that a ship arriving with a fair inward cargo, before she can be properly said to be ready to receive outward cargo under such a shipping order as this, must have discharged all her inward cargo except the quantity required to stiffen her. To use Mr. Scott's words, "she should be either clear of her inward cargo, or so far clear as she can be without danger." This seems to furnish a sufficiently clear practical rule: it appears to be very generally understood and acted on in Bombay; and it would, in my opinion, be desirable to establish it as the recognised test of a ship's being ready or not ready to receive cargo, under a shipping order in this form. For the decision of the present case, however, it is not necessary to adopt this test to its full extent; for in any view of the word "reasonable" it would seem clear that the *Fleur-de-Lis*, on the 5th of May, had not discharged a reasonable portion of her inward cargo—in fact, she had only begun to discharge her inward cargo at 3 P. M. on that day, and at its close had only discharged a very inconsiderable portion of it. Looking at all the circumstances of the case, and on a full consideration of the whole of the evidence, I am clearly of opinion that on the 5th of May the *Fleur-de-Lis* was not "ready to receive cargo," within the true meaning of the shipping order, and that consequently the shipper rightfully exercised his option of cancelling the order. The decree, therefore, will be for the defendant, with costs.

In the late Supreme Court, Equity Side.

1861.
June 7.

RA'MLA'L THAKURSIDA'S.....*Plaintiff.*

LAKHMICHAND MUNIRA'M, GOVINDA'S MUNIRA'M, and RAGHUNA'THDA'S LAKMICHAND *Defendants.*

Partners—Compromise between copartners in absence of the representative of a deceased partner—Hindú law—Ancestral trade—Power of manager to bind minor partner members of family.

Where the surviving partners of a firm, in the absence of a representative of a deceased partner, adjusted the partnership accounts and agreed to hand over a portion of the partnership property to one of the

1861.

RU'MLA'L THAKURSIDA'S v. LAKHMICHA'ND MUNIRA'M, *et al.*

partners in compromise of his claim, and the partner whose claim was so agreed to be compromised prayed for a dissolution of the firm upon the basis of such compromise, it was held that a representative of the deceased partner was a necessary party to the suit.

Surviving partners are treated as trustees of the partnership property for the benefit of the representative of a deceased partner; and an agreement entered into by such surviving partners in the absence of the representative of the deceased partner which is inconsistent with the nature of such trust—to deal with the partnership assets only by way of sale—will not be specifically enforced.

An ancestral trade descends like other Hindú property upon the members of an undivided family, and the manager of such family can on behalf of the family enter into copartnership with a stranger. In carrying on such a trade infant members of the family will be bound by the acts of the manager which are necessarily incident to and flowing out of the carrying on of that trade. The manager can pledge the property and credit of the family for the ordinary purposes of that trade, and third persons dealing *bonâ fide* with such manager are not bound to investigate the *status* of the family, minor members being bound by the necessary acts of the manager.

By necessary acts are meant such as are necessary for the material existence of the undivided family or the preservation of the family property; and a compromise between copartners of partnership accounts and differences by a transfer and division of partnership property is not such a necessary act, but is one which is left to be dealt with by the ordinary rules of law, and one which must be shown clearly to be of benefit to the infant before the compromise will be enforced.

The avoidance of a suit to take partnership accounts is not sufficient of itself to render a compromise necessary for the preservation of family property or beneficial to a minor member.

A copartner dealing with an undivided Hindú family is, with reference to its component members, in the same position that a partner according to English law is placed in with reference to his copartners and their representatives.

THIS was a Suit to enforce the specific performance of an agreement.

The Bill (as originally framed) stated that the plaintiff and defendants carried on trade as Merchants in Bombay together with one Rádhákisan Muṇirám, under the name of Raghunáthdás Rámlál, from 1843 A.D., to the 25th of November 1859, when Rádhákisan Muṇirám died, and the partnership was thereby dissolved.

The plaintiff resided in Bombay, and alone managed the business of the partnership in Bombay; the other partners resided at Mathurá, where the survivors continued to reside

at the time the Bill was filed. Large profits were realised by the plaintiff in Bombay, and, from time to time, transmitted by him to Mathurá, or carried to the account of the partners there.

In consequence of the firm being largely indebted to the plaintiff for his share of the profits, and of the Mathurá partners having over-drawn their account, differences arose in 1857, when one Chunilál Máṇikchand was sent down from Muthurá, and, by his assistance, the accounts were balanced, and a summary of the account was transmitted to Mathurá. Chunilál Máṇikchand died in 1859; and one Amedrám was then sent down by the Mathurá partners to Bombay, and he was, in February 1860, superseded by one Chobey Kamlápat Gopál, who was entrusted with full powers to enter anew upon the examination of the accounts of the firm which had then, as the Bill alleged, been dissolved by the death of Rádhákisan Munirám.

A fresh examination of the books was made by Chobey Kamlápat Gopál, and a considerable balance was ascertained thereby to be due from the defendants to the firm at Bombay and to the plaintiff individually. Chobey Kamlápat Gopál, however, on behalf of the defendants, refused to pay the balance but offered to compromise with the plaintiff. After various disputes between the plaintiff and the defendants the whole matter was referred to Kándás Nárandás and Premchand Ráichand with a view to the effecting of a compromise.

On the 16th and 17th of August 1860, meetings were held, the plaintiff being present on his own behalf, and the defendants being represented by one Kisanchand, Chobey Kamlápat Gopál, and two other agents, and it was then agreed that a compromise should be entered into on certain terms, as finally settled the agreement was to the following effect:—

"The God Shri Hari."

"To Bhái Rámlálji Thákursidás, written by Setts Lakmichándji and Rhádákisandásji and Govindásji and Raghunáthji to wit: In the Samvat year 1899 (A.D. 1842-3), there was established here in Bombay, in partnership under the name of Raghunáthdás Rámlál, a counting house, comprising our fourteen shares and your six shares, amounting to twenty shares. Under the name of that counting house you have traded to this day. In order that an understanding of the accounts of that counting house may

1861.

RA'MLA'L THAKURSIDA'S v. LAKHMICHA'ND MUNIRA'M, *et al.*

be come to with you, we, having given full authority on our part, have deputed to Bombay Chobey Kamlápat Gopál; you with your, and the said Kamlápat with his free will and consent having become unanimous, and an understanding of the account having been come to, you have come to an agreement with him as written below; *the particulars, thereof,* are as follows:—

Clause I.—Provided that the whole of the moveable and immoveable property in Bombay and in the Bombay Presidency belonging to the Bombay branch or pledged or mortgaged to it should belong absolutely to the plaintiff.

Clause II.—That the jewels, pearls, &c., clothes, furniture, and horses and carriages, &c., whether belonging to the firm or pledged to it, and then in the garden house in which the plaintiff resided and elsewhere in Bombay should belong to the plaintiff.

Clause III.—That Rs. 3,500 in the Oriental Bank, and a Government Promissory Note for Rs. 4,000 in the hands of plaintiff, as collateral securities for certain debts, should belong to him.

Clause IV.—Provided that the defendants' firm should pay such losses, as from the books of the Bombay Branch should appear due to the firm of Motichand Raghunáth, which losses had been incurred in respect of transactions carried on between that firm and the Bombay Branch firm, so far as the same could be settled with the sums that were claimable from Motichand Raghunath's firm, and that the defendants' firm should pay, in addition, Rs. 11,000, the share of the losses of Rámdayál Motirám in the said transactions, and that the plaintiff should pay the residue of losses incurred upon these transactions.

Clause V.—Provided that the debts receivable and payable by the Bombay Branch (with the exception of certain Ahmedábád contracts) should be respectively received and paid by the defendants' firm, to which the books relating thereto were to be delivered.

Clause VI.—Provided that the defendants' firm should alone be interested in and carry on two suits then pending against C. N. Cámá and Javirchand Karramchand respectively.

Clause VII.—Contained a provision as to a proportionate division *between the plaintiff and the defendants' firm of the proceeds of certain* suits instituted at Ahmedábád in respect of the before-mentioned Ahmedábád contracts.

Clause VIII.—Provided that so much of an outstanding of Rs. 90,000 or 95,000, due on a bill accepted in favour of one Bhái Tallakchand and by him made over to the partnership as should be recovered, should belong to the defendants.

Clause IX.—At Ahmedábád, on account of security for costs of the suits then pending, certain Government Promissory Notes had been deposited. These the defendants were to have.

Clause X.—Contained a provision that the defendants should pay the debts and liabilities incurred in reference to the Ahmedábád suits up to

17th August 1860 as the same should appear from the books of their Ahmedábád Agent, and should receive all claims on the sums account due to the Bombay Branch up to the same date as they appeared from the same books.

Clause XI.—That the future costs of the Ahmedábad suits should be paid by the plaintiff and defendants in proportion to their respective interests in the same, and that they should recoup themselves out of the costs recovered from the defendants in those suits for the sums so expended, the balance of costs recovered to go to the defendants.

Clause XII.—That these suits should be conducted and carried on with the mutual advice and consent of the plaintiff and the defendants.

Clause XIII.—That in consideration of the above agreements and of the property handed over to the plaintiff he should forego all claims against the defendants in respect of his share of the profits of the Bombay Branch, and pay, in addition, Rs. 2,17,000 by instalments guaranteed by Kándás Nárandás and should restore to the defendants a certain house in Mombadavi (portion of the said immoveable property) for which the defendants were to pay Rs. 25,000; the same to be deducted from the Rs. 2,17,000.

Clause XIV.—That certain jewels and clothes purchased by Chunilál Mánikchand, and some that had been sent to Bombay from Mathurá and other places should be delivered up to the defendants.

Clause XV.—That on these terms mutual releases should be signed."

This agreement was signed by Chobey Kamlápat Gopál, nominally on behalf of Lakhmichandji, Rádhákisanji (then deceased), Govindásji, and Raghunáthdásji.

Kándás Nárandás, in pursuance of this agreement, delivered to Chobey Kamlápat Gopál his written guarantee for the payment by the plaintiff of the Rs. 2,17,000, and it was further agreed that he, Kándás Nárandás, was to have a lien on the immoveable property referred to in the agreement for the due performance of his undertaking by the plaintiff; Chobey Kamlápat Gopál undertaking not to hand over the immoveable property to the plaintiff till the claim of Kándás Nárandás in respect of the guarantee was settled by the plaintiff. At the time of signing the agreement, Kándás Nárandás paid, on account of the plaintiff, the first instalment of the Rs. 2,17,000, viz. Rs. 10,100, and, a few days afterwards, before the other instalments became due, Rs. 1,30,000.

Chobey Kamlápat Gopál then opened a new branch firm of the defendants in Bombay, and, in part performance of the agreement, handed over to the plaintiff a shigram and horse and a diamond ring.

1861.

RA'MLA'L THAKURSIDA'S v. LAKMI-CHA'ND MUNIRAM, *et al.*

Large outstandings were also made over by the plaintiff to the defendants' firm, on account of sums due to the Bombay branch, and proper entries for the purpose of carrying out the agreement were made in the books of the Bombay branch with the concurrence of the plaintiff and defendants' agent, Chobey Kamlápat Gopál, and the books were deposited in the bungalow of Kándás Nárandás. Subsequently, further disputes arose and the plaintiff filed the present suit, praying for specific performance of the agreement and release, and for a declaration of the partnership having been dissolved as and from the date of the agreement, and for an account.

To the Bill, so framed, the defendants demurred on the grounds: (1) that no heir or representative of Rádhákisan was before the Court; (2) that the agreement sought to be enforced was signed by or on behalf of four persons and only three were made parties to the suit; (3) that the agreement was too vague, ambiguous, &c., to be carried into specific execution; (4) that the Bill disclosed no equity for relief.

The demurrer was argued before SAUSSE, C. J., and ARNOULD, J., in July and August 1861.

Westropp (Acting Advocate General) for the demurrer cited, as to parties—*Humphreys* v. *Hollis* (*a*), *Tasker* v. *Small* (*b*), *Robertson* v. *Great Western Ry. Co.* (*c*), *Douglas* v. *Horsfall* (*d*), *Evans* v. *Jackson* (*e*). As to effect of death or bankruptcy of partner—*Crawshay* v. *Collins* (*f*), *Featherstonhaugh* v. *Fenwick* (*g*), *Webster* v. *Webster* (*h*), *Buckley* v. *Barber* (*i*).

White on the same side cited *Morris* v. *Barrett* (*j*), 2 Story on Partnership 344, 346, 347, 351. As to effect of dissolution—*Fereday* v. *Wightwick* (*k*), *Butchart* v. *Dresser* (*l*). As to when specific performance will be decreed—*Cook* v. *Collingbridge* (*m*), exparte *Williams* (*n*), *Wilson* v. *Greenwood* (*o*), *Emery* v. *Wase* (*p*), *Twining* v. *Morrice* (*q*), *Mortlock* v. *Buller* (*r*), *Billinger* v. *Blagrave* (*s*), *Thompson* v. *Blackstone* (*t*), *Turner* v. *Harvey* (*u*), *White* v. *Cuddon* (*v*), *Thomas* v. *Dering* (*w*), *Bruce* v. *Wishart* (*x*).

(*a*) Jacob 73. (*b*) 3 Myl. and Cr. 63. (*c*) 10 Sim. 314.
(*d*) 2 Sim. and Stu. 184. (*e*) Sim. 217. (*f*) 15 Ves. 218.
(*g*) 17 Ves. 298. (*h*) 3 Swanston 490. (*i*) 6 Exch. 164.
(*j*) 3 Younge and J. 384. (*k*) 1 Russ. and Myl. 45; S. C. Taml. 250.
(*l*) 10 Hare 453. (*m*) Jacob 607. (*n*) 11 Ves. 3.
(*o*) 1. Swanston 471. (*p*) 5 Ves. 846. (*q*) 2 Brown Ch. Ca. 326.
(*r*) 10 Ves. 292. (*s*) 1 De G. and S. 63. (*t*) 6 Beav. 470.
(*u*) Jacob 169. (*v*) 8 Cl. and Fin. 766. (*w*) 1. Keen. 729.
(*x*) 27 L. J. Ch. 572.

Anstey in support of the bill cited *Powell* v. *Hall* (*y*); As to parties—*Tourton* v. *Flower* (*z*), *Delorne* v. *Hollingsworth* (*a*), *Barber* v. *Barber* (*b*), *Pearson* v. *Lynch* (*c*), *Ryan* v. *Roche* (*d*), *Pendlebury* v. *Walker* (*e*). It is a speaking demurrer: *Utterson* v. *Mair* (*f*); *Cawthorne* v. *Chalie* (*g*); *Davies* v. *Williams* (*h*); *Edsell* v. *Buchanan* (*i*); *Field* v. *Hutchinson* (*j*); *Hicks* v. *Baincock* (*k*); *Smith* v. *Small* (*l*). As to certainty, *Daring* v. *Nash* (*m*); *Blewitt* v. *Blewitt* (*n*). As to want of equity, *Sandilands* v. *Marsh* (*o*); *Simpson* v. *Chapman* (*p*); *Nathubhai* v. *Manmohundass* (*q*); *Wedderburn* v. *Wedderburn* (*r*); *Addis* v. *Knight* (*s*); *Robinson* v. *Alexander* (*t*); *Richardson* v. *Bank of England* (*u*); *Cookson* v. *Cookson* (*v*); Ex parte *Ruffin* (*w*); *Featherstonhaugh* v. *Turner* (*x*); *Nerot* v. *Burnand* (*y*); *Wedderburn* v. *Wedderburn* (*z*); *Belcher* v. *Tikes* (*a*); *Jones* v. *Morgan* (*b*); exparte *Pye* (*c*); *Mortlock* v. *Butler* (*d*).

Scoble on the same side cited in addition, *Hope* v. *Hope* (*e*); *Lumley* v. *Wagner* (*f*); *Haig* v. *Gray* (*g*).

Westropp in reply cited *Wilkinson* v. *Henderson* (*h*); *Penny* v. *Watts* (*i*).

Cur. adv. vult.

20th August 1861.—SAUSSE, C. J.:—The facts, so far as they are material to the case before the Court, are shortly these:—A firm, which consisted of five persons, including the plaintiff and the three defendants, carried on business in Bombay under the name of Raghunáthdás Rámlál. These five persons must be taken on the pleadings to have been entitled to equal shares. The fifth partner, Rádhákisan Muṇirám, died in November 1859, and the Bill alleges, "that the partnership thereby became dissolved." On the 17th of August 1860, an agreement, the subject of the present suit, was entered into between the plaintiff and the defend-

(*y*) 3 De G. and Sm. 456, S. C. 13 Tur. 1032.
(*z*) 3 P. W. 369. (*a*) 1 Cox 421. (*b*) 9 W. Rep. 16.
(*c*) 2 Hog. 186. (*d*) 2 Moll. 437.
(*e*) 4 Y. and Coll. 424. (*f*) 2 Ves. 95. (*g*) 2 Sim. and Stu. 127
(*h*) 1 Sim. 5. (*i*) 2 Ves. 83. (*j*) 1 Beav. 599. (*k*) Cox. 40.
(*l*) 14 Sim. 119. (*m*) 1 Ves. and Beames 551. (*n*) Younge 551.
(*o*) 2 B. and Al. 673. (*p*) 4 De G. M. and G. 154.
(*q*) Perry Or. Ca. 42; S. C. 3 Moo. P. C. 87. (*r*) 4 Myl. and Cr. 41.
(*s*) 2 Merivale 117. (*t*) 2 Cl. and Fin. 717. (*u*) 4 Myl and Cr. 165.
(*v*) 8 Sim 529. (*w*) 6 Ves 119. (*x*) 25 Beav. 382.
(*y*) 4 Russ. 247. (*z*) 22 Beav. 84; S. C. 2 Keen 722.
(*a*) 6 B. and Cr. 234. (*b*) 10 Jur. 238. (*c*) 18 Ves. 14
(*d*) 10 Ves. 292. (*e*) 22 Beav. 351. (*f*) 1 De G. M. and G. 604.
(*g*) 3 De G. and Sm. 741. (*h*) 1 Myl. and K. 582. (*i*) 2 Philipps 149.

1861.

RA'MLA'L THA'KURSIDA'S v. LAKHMICHAND MUNIRA'M *et al.*

ants, the other surviving partners, and is also signed on behalf of another person who is not a party to this suit.

The Bill prays for specific performance of the agreement of the 17th August 1860, and also for a declaration of dissolution of the firm of Raghunáthdás Rámlál on the terms and conditions contained in the agreement of 1860. It also prays that all necessary accounts may be taken. The demurrer is substantially four-fold.

I. That no heir or representative of Rádhákisan Muṇirám is before the Court.

II. That the agreement of the 17th August 1860 is signed by or on behalf of four persons and only three are made parties to the suit.

III. That the agreement is too vague, ambiguous, &c., in its terms to be carried into specific execution.

IV. That the Bill discloses no equity for relief.

So far as specific performance is prayed, *Tasker* v. *Small* (*a*) is a clear authority that the personal representative of Rádhákisan Muṇirám is not a necessary party to the suit as he is not a party to the agreement; but a dissolution is prayed of the firm of Raghunáthdás Rámlál on the terms and conditions in the agreement of the 17th August 1860 contained.

To that agreement, neither Rádhákisan Muṇirám (who had previously died on the 25th November 1859, as admitted in para. 1 of the Bill), nor any representative of him was a party.

It is clear that the interest of Rádhákisan Muṇirám should be represented before any such relief could be granted unless the surviving partners have a right to bind by their acts the interest of Rádhákisan Muṇirám.

It was ingeniously contended at the Bar, that they were acting within the scope of their implied authority, because this agreement was substantially only a mode of payment of a debt ascertained and adjusted to be due by the late firm in the lifetime of Rádhákisan Muṇiram, and the third para. of the Bill was relied upon to sustain that proposition. The third para. states, "that the books of the firm at Bombay were balanced, adjusted, and settled, between the plaintiff and his partners at Mathurá in 1857, through one Chunilál, who died shortly after;" but the fourth para. goes on to say

(*a*) 3 Myl. and Cr. 67.

that, after the death of Chunilál, a demand was made by the plaintiff, upon his said partners, to pay over the balance found due by such adjustment; and that, in consequence of such demand, the said partners sent Chobey Kamlápat Gopál, with full power and instructions, to proceed to a new examination of the said accounts; that he arrived in Bombay, in February 1860 (the other partner, Rádhákisan Muṇirám, being then dead) with a letter from the defendants stating that he had authority to conduct the affairs and business of the firm (so dissolved by death as aforesaid) with the advice of the plaintiff. The fifth para. states that a fresh examination then took place of the books of the firm from 1843 to 1859, that a considerable balance was found due, "collectively and individually" from the defendants (not from the late firm), and instead of making payment of "the said last-mentioned balance," Gopál said it was the intention of the defendants to compromise the plaintiff's claim in respect of the premises. That the plaintiff consented to a fair and reasonable compromise of his said claim. That a complaint was made by the plaintiff, and a demand to be paid the fair balance so due to him as aforesaid, and "that he again offered to square his accounts."

The eighth para. states that one Kissanchand was then sent down, with full power, by the defendants, "to settle, and for the purposes of settling," all matters "in dispute between them" (the defendants and the plaintiff).

And the ninth, that the plaintiff was persuaded to refer the same to arbitration, and agreed that an adjustment of all the said matters in dispute should take place on the terms following:—namely that the whole of the said partnership estate and effects at Bombay, with full liberty to carry on the said business there for his own sole and separate advantage, should be assigned to and be absolutely vested in the plaintiff; and that, in consideration thereof, he should forego all his said claims, and further pay, through the hands of the said referees, unto the defendants, in manner hereinafter mentioned, the sum of Rs. 2,17,000, and also pay unto the said firm of Motichand Raghunáthdás, the further sum of Rupees twenty-three thousand, being the amount of losses in a certain trade theretofore carried on through the last mentioned firm by the said firm of Raghunáthdás Rámlál in the plaintiff's name to the knowledge of the said

1861.

RA'MLA'L THA'KURSIDA'S v. LAKHMICHAND MUNIRA'M *et al.*

leave him to pursue his remedy at law for breach of the contract. Surviving partners are treated as trustees of the partnership property for the benefit of the representative of a deceased partner (*j*). In *Booth* v. *Parkes* (*k*) Sir Anthony Harte says the surviving partner deals with the property rather in the character of a trustee. That being the character in which surviving partners are to be viewed in a Court of Equity, the case of *Thompson* v. *Blackstone* (*l*) seems to apply strongly in principle to the case before the Court. There, a Bill was filed for a specific performance of an agreement to purchase property, and it was demurred to for want of equity. In order to support the demurrer, it was relied upon that the will showed the plaintiff was about to apply a portion of the proceeds to a different purpose from that which was very indistinctly shadowed out as a trust upon the record; but it appeared clearly that the plaintiff was to be responsible to the estate of the deceased for the full amount of the sum intended to be so applied. The Master of the Rolls held that although the trust was not very distinct yet it was sufficient to prevent such a contract from being carried into execution by the aid of a Court of Equity, and at page 473 he says, that he thought there was sufficient to show there were trusts to be carried into effect under the will, "and that which is sought to be carried into effect is a deviation from those trusts."

We think that entering into the agreement sought to be enforced was, in the absence of the personal representative of Rádhákisan Muṇirám, a deviation from the trust which the law imposed upon the plaintiff as a surviving co-partner, and which the plaintiff was bound to carry out towards that representative. No explanation having been given for that absence upon the Bill, the Court will look upon the transaction with disfavour and suspicion, and will not lend itself to a participation in it.

Besides, under the circumstances of this case, neither plaintiff nor defendants could, according to the decision in *Buckley* v. *Barber* (*m*), make title to this property, which the Court would be called upon by its decree to partition between them. Upon these grounds, we think the plaintiff should be left to any action which he can maintain at law for recovery of

(*j*) 1 Lindley, p. 564, 1st Ed. (p. 991, 2nd Ed.)
(*k*) 1 Molloy 465; S. C. Beatty 444.
(*l*) 6 Beav. 470. (*m*) 6 Exch. 164.

damages for the breach of contract by the defendants; we, therefore, allow this ground of demurrer also, and allow the demurrers generally with costs.

1861.
RA'MLA'L THAKURSIDA'S v. LAKHMICHAND MUNIRA'M *et al.*

Demurrers allowed with costs.

By leave of the Court, the plaintiff filed, on the 23rd December 1861, an amended Bill of complaint in this case, and thereby made Lakshumandás Rádhákisan, the only son and heir of Rádhákisan Muṇirám, and Kándás Nárandás parties as defendants to this cause. It was admitted by the Bill that Lakshumandás Rádhákisan was, at the time of his father's death, and still was, an infant under the age of 16 years. The Bill, however, set out the circumstances under which the partnership was formed; it stated that one Muṇirám Shet carried on business as a merchant and banker at Mathurá, in the name of Muṇirám Lakhmichand, and had various branch firms in different parts of India, but no branch at Bombay.

In or about the year 1835 he died, leaving three sons, Lakhmichand, Rádhákisan, and Govindás, his heirs and representatives, according to Hindú law, who inherited the whole of his property, moveable and immoveable; of none of which did they make partition, but continued, until the death of Rádhákisan, to live together at Mathurá, as an undivided Hindú family, joint in food, worship, and estate; and so they continued to live until the death of Rádhákisan, in November 1859.

The defendants and Rádhákisan, after the death of their father, continued to carry on the business at Mathurá and elsewhere; and, in the year 1842, the plaintiff entered into an agreement with the Mathurá firm so, as last mentioned, constituted, to open a branch firm in Bombay in partnership with the Mathurá firm. The profits of the branch that was to be so opened at Bombay, it was agreed, were to be divided into twenty-one shares; of which the plaintiff was to have six, the Mathurá firm fourteen, and one share was to be set apart for the Hindú deity, Shri Bálláji. The duration of the partnership was not specified in or limited by the agreement.

In accordance with the terms of this agreement the plaintiff (A. D. 1843) opened a branch firm in Bombay under the name of Raghunáth Rámlál, the name being compounded of that of the plaintiff (Rámlál) and of Raghunáthdás (the 3rd defendant) the son of Lakhmichand, who, as member of an

1861.

RA'MLA'L THA'KURSIDA'S v. LAKSHMICHAND MUNIRA'M et al.

undivided Hindú family, claimed a share in the family firm independently of his father. He was a minor of five years, when the Bombay branch was opened, but, as his name was used in all the transactions and suits of that branch, he was joined as a defendant in the suit.

In the books of the Bombay branch two partners' accounts only were kept; (1) that of the plaintiff; (2) that of the Mathurá firm, treated as an individual partner.

The remainder of the amended Bill was the same in substance as the original Bill.

To the Bill, so amended, the adult defendants demurred on the grounds—I. That the agreement was too vague, ambiguous, &c. to be specifically enforced; II. That it was not shown by the plaintiff in his Bill how the agreement was binding either at law or in equity upon the infant defendant; III. For want of equity.

The infant defendant likewise demurred to the Bill on the same grounds.

These demurrers were argued in the High Court before SAUSSE, C.J., and ARNOULD, J., in September 1862.

Dunbar and *Scoble* for the plaintiff; *Westropp*, *Bayley*, and *Green* for the three first defendants; *White* and *Green* for Lakshumandás Rádhákisan.

The following authorities were cited in the course of the arguments:—

1 Strange H. L., 141, 176, 199, 200, 202, 203; *Petumdoss* v. *Ramdhone Doss* (*a*); *Hunooman Persaud Panday* v. *Mussamut Koonweree* (*b*); *Thompson* v. *Blackstone* (*c*). Spry on Specific Performance 110, 111, 113, 114, 159—264; *Shrewsbury and Bir. Railway Co.* v. *London and N. W. Railway Co.* (*d*); *Harnett* v. *Yielding* (*e*); *Buckley* v. *Barber* (*f*); *Flight* v. *Bolland* (*g*); Steele's Summary, pp. 59, 297, 305; *Doe d. Succaram* v. *Laxumbai* (*h*); 2 Colebrooke's Dig. 56, 139, 305; Vyavahára Mayukha, Ch. VIII. & IX; *Baboo Tanokey Doss* v. *Bindabun Doss* (*i*); Strange's Man. H. L., Ch. VIII; *Sudasew Bikajee* v. *Sorabjee Rutunjee* (*j*); Montriou's Supplement to Morton's Calc. Rep. p. 370; Manu .Ch. VIII.;

(*a*) Taylor Rep. 279. (*b*) 6 Moo. Ind. App. 393. (*c*) 6 Beav. 470.
(*d*) 4 De G. M. and G. 115; S. C. 6 Ho. Lo. Ca. 113.
(*e*) 2 Sch. and Lef. 549. (*f*) 6 Exch. 164. (*g*) 4 Russ. 298.
(*h*) Perry Or. Ca. p. 129. (*i*) 3 Moo. Ind. App. 175.
(*j*) Morris Selected Decisions, Part II., p. 24.

Pearson v. *Lynch* (*k*); *Griffen* v. *Griffen* (*l*); 2 Macnaghten H. L. 294, 295, 296, and 297; 1 Macnaghten 105, 110; 2 Mad. Notes of Cases, p. 78; Strange, H. L., Appendix p. 368, 449; Mitákshará, Ch. I. Sec. 1, paras. 28 and 29; *Downes* v. *Grazebrook* (*m*); *Hunter* v. *Atkins* (*n*); Chambers on Infancy, p. 442.

Cur. adv. vult.

18th Feb. 1863.—SAUSSE, C.J.:—This is a demurrer to an amended bill for specific performance of an agreement contained in two writings, dated the 16th and 17th of August 1860.

The amended bill prays performance of the stipulation in that agreement, that all the defendants should execute the necessary deeds and writings for carrying the agreement into effect. It also seeks for a dissolution of the late firm of Raghunáthdás Rámlál from the 17th August 1860, and that the defendants, constituting what is called the Mathurá family firm, or the adults among them, should pay the costs of the suit.

It appears from the bill, that one Munirám, who resided at Mathurá, carried on business under the name of Muṇirám Lakhmichand as a merchant and banker in many parts of India, and that, on his death previous to 1842, his trade descended to his three sons—the two defendants, Lakhmichand and Govindás, and Rádhákisan, who died before the institution of this suit. They carried on the same business in all its branches, as an undivided family, and in the name of Muṇirám Lakhmichand. In 1842 the plaintiff entered into an agreement with that firm to carry on business in partnership, in Bombay, under the name of Raghunáthdás Rámlál. Raghunáthdás was then an infant; he was the son of the defendant Lakhmichand.

Two personal accounts were kept by the Bombay firm, one in the name of the plaintiff, and the other in the name of the Mathurá firm of Muṇirám Lakhmichand.

In consequence of some differences, in 1857 an agent of the Mathurá firm was despatched to Bombay, and, after remaining there and examining the accounts of the Bombay firm for about a year, the accounts between the Mathurá

(*k*) 2 Hog. 186.
(*l*) 1 Sch. and Lef 250.
(*m*) 3 Merivale 200.
(*n*) 3 Myl. and K. 113.

1863.

RA'MLA'L THA'KURSIDA'S v. LAKHMICHAND MUNIRA'M *et al.*

firm and the Bombay firm were adjusted and settled down to the Diváli (or 6th November) of 1858. The result was that the Mathurá firm was found to be indebted to the Bombay firm in about seventeen-and-a-half lacs of Rupees; and it was ascertained, in consequence of such finding, that a very considerable balance was then due from the Mathurá firm to the plaintiff for his share of the profit of the Bombay firm.

The sum of seventeen-and-a-half lacs was still due by the Mathurá firm to the Bombay firm on the 17th of August 1860, when the agreement, hereafter mentioned, was entered into.

The result was despatched to the Mathurá firm and not objected to in terms, but, before any other proceedings took place, the agent died, and subsequently Rádhákisan died in November 1859, leaving the defendant Lakshumandás, an infant of six years old, his only son and heir.

Shortly after the death of Rádhákisan, one Chobey Kamlápat Gopál, a duly authorized agent, on the part of the firm of Munirám Lakhmichand was sent down to Bombay to compromise and settle the plaintiff's claim in respect of his share in the profits of the Bombay branch firm, found due upon the above-mentioned adjustment of accounts down to November 1858.

That agent, on his request, obtained a summary of the dealings and transactions of the Bombay branch firm for the then current year of 1859, and also an inspection of the books of the firm from 1842 to 1859. After an examination for three days, a proposal of compromise was made by the agent, but declined by the plaintiff.

This agent having then advertised in the public newspapers that the plaintiff was not a partner of the Mathurá firm, the plaintiff telegraphed a complaint to Mathurá, and in the telegram offered "once more to square his accounts with the firm," and also stated "that if this offer were declined, a law suit would ensue."

On the 17th of May 1860 he received a reply inviting him "to repair to Mathurá within a fortnight, or, after explaining the accounts to the agent, to clear himself."

On the 30th of May 1860 the plaintiff received a notice from the firm cautioning him against interfering in their transactions.

Shortly after that notice (in June 1860), a person, who had served for thirteen years as head *munim* in the Bombay Branch firm, was sent down to Bombay by the Mathurá firm with full powers as its agent and representative, in conjunction with Kamlápat, to compromise and settle the said claims of the plaintiff.

That agent, having failed in some overtures, then represented to the plaintiff that the Mathurá firm was altogether averse to any settlement based upon the state of their accounts with the plaintiff; that both he and Kamlápat had induced two persons to act in the settlement of the said matters and to interfere as mediators; and proposed to the plaintiff to compromise and settle in that way his said claim, in respect of his share in the profits of the Bombay firm, found upon the adjustment before mentioned. The plaintiff eventually agreed to this proposal, and the matters in dispute were referred to those two persons, the agents of the Mathurá firm undertaking upon its behalf, and the plaintiff on his own, to abide by and carry out the terms of compromise which might be agreed upon through the mediation of those persons.

Meetings took place on the 16th and 17th of August 1860, and on the latter day terms of compromise and settlement were agreed upon between the plaintiff and the two agents of the Mathurá firm, with the approbation of the mediators. They were reduced into writing and signed by Chobey Kamlápat Gopál on behalf of the defendants Lakhmichand, Govindás, and Raghunáthdás, and also on behalf of Rádhákisan, who was then dead.

The infant defendant Lakshumandás was not named in the agreement, nor was any signature professed to be given upon his behalf.

The general principle of the compromise was to transfer to the plaintiff all the immoveable and personal property, jewels, &c., belonging to the branch firm in Bombay, in consideration of the plaintiff's paying or delivering up to the Mathurá firm money and the house of business in Bombay to the amount of about two lacs of Rupees, and also of giving up to them the right to recover all outstandings due to the Bombay branch, with the exception of some suits then pending at Ahmedábád, which were to be carried on by mutual advice and at mutual risk, and the sums recovered

1863.

RA'MLA'L THA'KURSIDA'S v. LAKHMICHAND MUNIRA'M *et al.*

to be divided in proportion to the respective shares of the plaintiff and the Mathurá firm in the Bombay branch firm.

Some of the terms of this compromise were mutually performed, but far the more important by the plaintiff only, who gave up possession of the house of business, and paid over a lakh and a-half of Rupees to the agents of the defendants.

In a few days after the agreement was signed, the agent of the Mathurá firm commenced business on its separate account in the name of Govindás Raghunáthdás, and in the house given up by the plaintiff to the defendants' firm. It appeared by the allegations in the Bill that, in addition to the above, the plaintiff had made over to the defendants, as constituent members of the Mathurá firm, Government promissory notes to the amount of one lakh, outstandings to the amount of four lakhs, and an interest in claims in course of litigation which were valued at seven lakhs of rupees.

The usual entries of those proceedings were made in the partnership books with the consent of the agents for the Mathurá firm. A countermand of a notice, previously sent to tenants in Bombay not to pay their rents to the plaintiff, was prepared and submitted to the plaintiff's solicitors by the solicitor for the Mathurá firm. A meeting took place between them to arrange the best mode of carrying out the residue of the terms of the compromise, when a difficulty suddenly arose in consequence of some of the title deeds not being forthcoming out of the hands of the solicitor for the defendants.

On the 16th of September 1860, mutual releases were submitted by the plaintiff's solicitor to the solicitor for the Mathurá firm. Nothing further was done, until eventually on the 19th of October the solicitor who purported to act upon behalf of all the defendants (including the infant defendant Lakshumandás), repudiated the agreement as fraudulent, by reason of alleged misrepresentation and concealment of material facts connected with the partnership accounts, and he called upon the plaintiff to come to a fair account with the defendants, offering to lodge the amount received from the plaintiff in the hands of a third party.

Under the above circumstances, a Bill for a specific performance of the agreement of August 1860 was filed by the plaintiff; and the adult defendants demurred to the relief prayed on the grounds—(1) that the agreement was in itself

too vague, ambiguous, repugnant, and inequitable, &c., to be specifically carried out; (2) that the agreement was not binding upon the infant defendant and would not, therefore, be specifically decreed as against the adult defendants; (3) for want of equity generally.

The agreement consists of fifteen clauses, the last being an informal but substantial release by the defendants to the plaintiff from all other claims of every description except those created by that agreement.

Did the case rest on the ground of the agreement being inequitable, either in its terms, or in the mode by which it was arrived at, I see nothing upon the facts stated in the amended Bill that should lead to such an inference as between adult partners; and the Court would be bound to sustain the agreement as far as possible against parties who appear to have repudiated it after having possessed themselves of some of the most material advantages accruing to them under its provisions.

The agreement itself is, like most native documents, very loose in expressions, and in some respects inaccurately conveys the intentions of the parties.

We have to consider whether any material clause be so vaguely or ambiguously worded that the Court cannot feel satisfied that it possesses the means of ascertaining and carrying into effect the intention of the parties.

The plaintiff has adopted the course of giving an explanation of each of the clauses of the agreement with the view of getting rid of any objection upon those grounds; and so far as such explanations or averments come within the rules of evidence, we are bound to construe the contract with their aid.

Parol or extrinsic evidence is admissible to ascertain the nature and qualities of the subject matter of an instrument, or to identify the persons and things to which it refers; its office is thus to explain and apply doubtful terms, which, by virtue of that explanation, become capable of conveying a definite meaning, and are in fact essential to give the instrument its legal effect.

The plaintiff has thus successfully avoided the ambiguity to be found in the clauses of this agreement with one exception; as the plaintiff has not in his Bill offered to waive any

1863.

RA'MLA'L THA'KURSIDA'S v. LAKHMICHAND MUNIRA'M *et al.*

benefit which he might be entitled to under any clause or portion of a clause vaguely or ambiguously worded, it does not become necessary to decide how far the plaintiff could, by such waiver, entitle himself to judgment on this demurrer, or at the hearing to call for a specific execution of the agreement; but it would be competent for one party to a contract, by waiving ambiguously worded benefits for himself, or by consenting to give the fullest effect to ambiguously worded benefits to his adversary, to call upon the Court for specific execution of the other terms of the contract.

The principal difficulty arises upon the 12th clause, which provides that certain suits at Ahmedábád shall be carried on "with our mutual advice."

I do not see how that term in the agreement could be either satisfactorily or specifically carried into execution as it stands; but if the plaintiff had offered to give advice whenever required, and, waiving any rights under the clause, had consented to abide by the defendants' carrying on of the suits, and to a direction to join in all acts relating to the suits, and allow his name to be made use of by the defendants, I do not think that clause should form a bar to the enforcement of the other portions of the contract. That has not been done, and as there can be no decree for a partial execution of a contract, the demurrer should be allowed upon this ground.

In connection with the second ground of demurrer, arises the formal objection that the plaintiff prays for a decree that the "defendants, constituting the Mathurá firm, should make and execute all writings and deeds necessary to carry into effect their said undertakings, stipulations, and the releases, guarantee, and agreement."

The Bill in para. 3 states that the infant defendant Lakshumandás is one of the constituent members carrying on that firm; and perhaps, on the ground that the Court would not make any such personal decree against an infant, this demurrer should be allowed.

I call it a formal objection, for, according to the scope of the bill, the prayer should apparently have been that the adult defendants as the representative "managers or conductors" of the said family firm (as they are termed in the 15th para.) should execute such deeds, &c., and that the minor defendant should be bound thereby.

But the same ground of demurrer, in addition, substantially raises an important question, namely, to what extent a minor member of an undivided Hindú family will be held bound by the acts of the family manager with reference to an ancestral family trade.

No case has been referred to in argument in which that question has been discussed, and I have been unable to find one. It must be decided as *res integra*, and by the application of established principles of law.

This being a matter of contract between Hindús, the laws and usages of that community must govern the decision of the Court.

It was insisted for the plaintiff; (1) that the adult defendants, as native "managers or conductors of the Mathurá family firm," possessed unfettered power to enter into any engagement on behalf of, and to bind, the infant members of their undivided family; (2) that if that power were held to be limited to acts necessary for the benefit of the family, or of the minor individually, although this compromise was not expressly averred on the face of the Bill to be so, yet that it sufficiently appeared by necessary inference from the facts stated in the pleadings that it was.

The first proposition is far too wide, and is at variance with the great current of Hindú authorities; and it will be sufficient to say we have no hesitation in deciding against it.

The second raises the important question to which I have just adverted.

The case of *Petumdoss* v. *Ramdhone Doss* (*a*) before Sir L. Peel is an authority that an ancestral trade, like other Hindú property, will descend upon the members of a Hindú 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.

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 managers, which are necessarily incident to and flowing out of *the carrying on* of that trade, whether it be singly or with a copartner.

The power of a manager to carry on a family trade necessarily implies a power to pledge the property and credit

(*a*) Taylor, Rep. 279.

1863.

RA'MLA'L THA'KURSIDA'S v. LAKHMICHAND MUNIRA'M et al.

of the family for the ordinary purposes of that trade. Third parties, in the ordinary course of *bonâ 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.

Were such a power not implied, property in a family trade, which is recognised by Hindú law to be a valuable inheritance, would become practically valueless to the other members of an undivided family wherever 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 Hindú 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 Hindú law generally extends to the interests 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 case.

It is not easy to draw a well-defined line between what is, and what is not, an act necessarily incident to the carrying on of a trade; but taking into account the intimate and fiduciary position of one partner towards a copartner, and the anxious protection afforded by Hindú law to the interests of a minor, I think it safer, and more in accordance with its spirit, to hold, in a case like the present (where the property, so far as the minor's interest is concerned, is of an ancestral character), that the compromise of partnership differences and accounts, by a division and transfer of partnership property, should not be treated as an act necessarily incident to the carrying on of a trade, but should be left to be governed by the law applicable to ordinary dealings with the manager of an undivided family when the interests of an infant member are concerned.

After an examination of all the authorities which have been cited, that law appears to me to have been correctly laid

down by Sir T. Strange: 1 Hindú Law, page 202, where it is stated that the necessity of inquiry by persons dealing with an undivided family, as to the purposes for which a sale or mortgage of family property is effected by the manager, is greatly enhanced by the fact of minors being concerned; and that infants in general will not be bound but by "necessary acts," or such as are "evidently for their benefit."

By "necessary acts" are meant such as are necessary for the material existence of the undivided family, or the preservation of the family property, in addition to expenditure upon religious ceremonies and marriages, which, for members of the family, are, by Hindú law and usage, looked upon in the nature of paramount charges upon the undivided inheritance.

On reading the pleadings with every attention, I have been unable to find it stated in terms, or to glean by necessary inference from the facts, that this compromise was necessary for the preservation of the family property, or that it would be for the benefit of the infant whose interests are sought to be bound by its provisions.

The avoidance of a law suit to take partnership accounts does not, standing alone, fulfil either condition, and that is the only clear benefit appearing upon the Bill. As between adults it might be a sufficient ground for enforcing specific performance, but where a minor's interests are to be taken notice of by the Court, the case made should go further and show, either in express terms or by necessary inference from facts, that it would be for the advantage of the minor that the compromise should be carried out, or at least that the amount of property which the plaintiff was to receive (as in the present case) was a fair and reasonable adjustment upon foot of the partnership accounts.

There is no such averment in the Bill. The plaintiff does not state the value of the property he was to receive, nor the amount of the balance alleged to be due to him up to the Diváli of 1858. In the absence of averment the Court has not been afforded the means of instituting a comparison between the partnership property agreed to be transferred and the amount alleged to be due.

1868.

RA'MLA'L THA'KURSIDA'S v. LAKHMICHAND MUNIRA'M *et al.*

Consistently with the statements in this Bill, the plaintiff might have drawn out that balance, and more, subsequently to November 1858. He might have been receiving under that compromise an unconscionably large amount of property in liquidation of the balance alleged to have been due; and the interests of the minor, which the Court is bound to protect, might have been unduly sacrificed, if it were to enforce this compromise against him without further investigation.

As a copartner dealing for the purchase of partnership property in which an infant was interested, the plaintiff was bound to show that such a compromise and transfer were necessary for the preservation of the family property, or that it would be for the benefit of the minor that such should take place.

The only work in which I have found any Hindú usage referred to upon the mode of settling partnership accounts is Steele's Summary, where the then existing customs in the Deccan on this subject are detailed. Upon the authority of the individuals in the note to p. 297, it is said, p. 303, &c., that on the death of one of several copartners, arbitrators and respectable persons would decide, on an examination of accounts, what balance was due to the family, and releases would be given accordingly; and it is further said that after such full investigation, the accounts would not be demandable by a son on growing up, nor would a different estimate be admissible; but should the surviving partner receive a release on his own statement, the son would have a right, on coming of age, to dispute the accounts, and to receive any small balance not paid to his family.

It appears from p. 307 that the "arbitrators," spoken of in the above passages, are the "arbitrators of each caste." The laws of caste may be considered to have been substitutional for regular Courts of Justice, and to have gained the sanction attached to them, owing to the absence of other Courts, in which the Hindú population could place confidence. But, however suited that system may have been to a state of society, acting independently of regularly constituted tribunals of justice, I do not think its usages can be imported as law into this jurisdiction, where British Courts have existed for so long a period, and where they

have been in the constant practice of extending to the interests of Hindú minors an analogous protection to that which British subjects have received.

According to our decision, a copartner dealing with an undivided family will be placed, with reference to its component members, in the position that a partner according to British law is placed in with reference to his copartners and their representatives in case of death.

The adult defendants here had no legal power to bind the interests of the minor defendant by this compromise.

The plaintiff, as a copartner, had knowledge of the *status* of the undivided family, and was thus affected with notice of that want of title.

The interests of the minor are under the protection of this Court to the extent recognised by Hindú law. On the facts before us there is no sufficient guarantee that those interests have been duly protected, and, where the plaintiff seeks to put the power of this Court in motion to bind those interests, we feel that under such circumstances we ought to refuse to decree a specific performance which would have that effect.

We therefore allow this demurrer, and leave the plaintiff to seek such remedy against the adult defendants for breach of their contract as he may be advised to take.

The demurrer, under the circumstances, is allowed without costs from the plaintiff to either class of defendants. The adult defendants are to pay to the infant defendant his costs in the cause.

Demurrers allowed.

Subsequently to the delivery of the above judgment allowing the demurrers to the amended Bill, a motion on behalf of the plaintiff was made in August 1863 for leave to re-amend the Bill, but after a sharp contest, was refused with costs. No further proceedings were taken in this suit. Another and prior suit, which had been instituted on the 30th November 1860, and in which Lakhmichand Munirám, Govindás Munirám, and Raghunáthdás Lakhmichand were plaintiffs, and Rámlál Thákursidás, Kándás Nárandás, Premchand Ráichand, Rámdayál Motirám, and the infant Lakshumandás Rádhákisandás were defendants, was event-

1863.

RA'MLA'L THA'KURSIDA'S v. LAKHMICHAND MUNIRA'M *et al.*

ually, after the death of the principal defendant, Rámlá Thákursidás, compromised. The Bill in that suit prayed that the alleged agreement, releases, and undertaking of August 1860 should be declared fraudulent and void, and be set aside, that the copartnership consisting of the plaintiffs, the defendants Lakshumandás Rádhákisan the minor, and Rámlál Thákursidás in the Bombay branch firm, should be declared to be dissolved from the 31st May 1860, or the 5th June 1860; that an account should be taken of the dealings of that branch firm, and of the moveable and immoveable property of that branch firm in the possession of the defendant Rámlál, &c., &c.

1861. Aug. 30.

In the late Supreme Court, Equity Side.

RA'MCHANDRA DA'DA' NA'IK.....*Plaintiff.*

DA'DA' MAHA'DEV NA'IK, LAKSHUMAN DA'DA' NA'IK, and KESHAV DA'DA' NA'IK.....*Defendants.*

Hindu Law—Partition—Moveable ancestral property—Immoveable ancestral property—Ancestral business—Supreme Court—Jurisdiction.

On this side of India a son (Hindú) has no right to enforce partition of ancestral moveable property in the hands of his father, or to claim a separate share in an ancestral business against his father's will, although the son alleges that his father is prejudiced against him, and intends to deprive him of his succession to such property and business.

Semble, that such son cannot enforce partition of immoveable ancestral property under similar circumstances.

The late Supreme Court had no power to decree a partition of ancestral property situate beyond the limits of its jurisdiction.

THE Bill stated that Mahádev Náráyan Náik, deceased, a resident of Shápur, in the independent state of Sángli, in the Southern Maratha Country, during his lifetime and up to the time of his death carried on an extensive business as a shroff at Shápur, having branches at various places, and amongst others at Bombay, where he carried on the same business under the name of Mahádev Náráyan Shápurkar, by his munim, Kharsetji Ejiarji.

Mahádev Náráyan Náik died intestate in the year 1847, leaving two sons, Harbá Mahádev Náik and Dádá Mahádev Náik, and seven grandsons, namely, Vithobá Rághobá (the son of Rághobá Mahádev, who had predeceased his father), Shrinivás Venktesh and Eshvant Venktesh (the sons of