

and he should be given an opportunity to meet the said allegations and make his defence.

I must, therefore, hold that the order passed by the learned Judge directing that the licences held by the petitioner in the province should be cancelled and that a copy of his judgment should be sent to the Registrar of Money-lenders should be set aside and the matter sent back to the learned trial Judge with a direction that notice of the proceedings proposed to be taken against the petitioner should be given to him and an enquiry held under s. 14. If after hearing the petitioner the learned Judge is satisfied that the petitioner deserves the penalty contemplated by s. 14, then the learned Judge should pass appropriate orders in that behalf.

In the result, the order passed by the learned Judge dismissing the plaintiff's suit is confirmed, but the consequential order passed against the petitioner under s. 14 is set aside and the matter is sent back to the trial Court for disposal in accordance with law. There will be no order as to costs of this revisional application.

Case sent down.

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APPELLATE CRIMINAL

FULL BENCH

Before Mr. M. C. Chagla, Chief Justice, Mr. Justice Gajendragadkar and
Mr. Justice Dixit.

STATE v. ISHWARLAL CHHAGANLAL.*

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Bombay Prevention of Adulteration Act (Bom. V of 1925), ss. 4 (1) (a) and (b), 19 (1) (c)—Surat Prevention of Adulteration Rules, r. 6 (B) (i)—Government's power to raise presumption—Whether the presumption under r. 6 (B) (i) ultra vires.

Rule 6 (B) (i) of Surat Prevention of Adulteration Rules is not *ultra vires* s. 19 (1) (c) of the Bombay Prevention of Adulteration Act, 1925.

A rule framed by Government under s. 19 (1) (c) need not necessarily specify both the deficiency in normal constituents and the addition of extraneous matter.

Section 19 (1) (c) permits Government to frame a rule either with regard to the quantity of the deficiency in any of the normal constituents of an article or a rule with regard to the addition of extraneous matter in any article.

In framing the rule it is open to Government either to specify the quantity of deficiency or the quantity of extraneous matter,

State v. Madan Dhanji,⁽¹⁾ overruled.

* Criminal Appeal No. 992 of 1955.

1. (1953) 56 Bom. L. R. 128.

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Appeal against the Order of acquittal passed by C. G. Bhatt, Esquire, Sessions Judge setting aside the Order of conviction and sentence passed by M. K. Lakhtaria, Esquire, Judicial Magistrate, First Class, Surat.

Ishvarlal Chhaganlal (accused) was charged with having committed offences under s. 4 (1) (a) (b) of the Bombay Prevention of Adulteration Act, 1925 upon the allegation that he, on April 28, 1953, had kept in his shop for sale and sold to the complainant, a food Inspector, ghee, which was not of the nature, substance or quality demanded. The Magistrate convicted the accused by his order, dated January 17, 1955, observing:

"Now according to the r. 6 (B) (i) of the Surat Prevention of Adulteration of article of Food Rules published in Government Notification, Government Department No. 8095 dated August 9, 1941, it seems that 'Ghee which has a Butyro Refractometer reading of 40° or less than 40° or more than 44.5°, or a Reichert Woollny value of less than 24° or which has an acidity of more than 2.5 per cent calculated as Oleic acid' is to be presumed, until contrary is proved to be not of the nature, substance or quality, which it purported to be."

The accused appealed to the Sessions Judge at Surat, who set aside the conviction and acquitted the accused by his order dated April 12, 1955, holding that no presumption under r. 6 (B) arose.

The Government of Bombay appealed against the acquittal.

The appeal came up for hearing before Gajendragadkar and Shah JJ., on October 11, 1955. Their Lordships were of the opinion that the matter should be referred to a Full Bench and delivered the following referring Judgments.

Gajendragadkar J.—The short question of law which arises in this appeal is whether r. 6 (B) (i) framed by the local Government under s. 19 sub-s. (1) of the Bombay Prevention of Adulteration Act (V of 1925) is *ultra vires*. The respondent was charged with having committed an offence under cls. (a) and (b) of s. 4 sub-s. (1) of the said Act. The learned Special Judicial Magistrate, First Class, Surat, who tried this case, convicted him of the said offence and sentenced him to pay a fine of Rs. 500 for each offence in default to suffer rigorous imprisonment for a month each. When the matter went before the learned Sessions Judge at Surat in appeal, the learned Sessions Judge took the view that r. 6 (B) (i) under which a statutory presumption was sought to be raised by the prosecution against the accused was *ultra vires*. That is why the appeal preferred by the accused was allowed, the order of conviction and sentence passed against him was set aside, and he was ordered to be acquitted and discharged. It is this order of acquittal which is challenged before us by Mr. Chandrachud on behalf of the State and the only point raised before us is that the learned Sessions Judge was in error in holding that the rule in question is *ultra vires*.

The view taken by the learned Sessions Judge is based upon a decision of this Court in *State v. Madan Dhanji*⁽²⁾. Mr. Chandrachud contends that in this case the learned Judges were more directly concerned with the words "which has an acidity of more than 2.5 per cent calculated as Oleic Acid" in r. 6 (B) (i) and it would appear from both the judgments of Bavdekar and Vyas JJ. that the learned Judges had not considered the other words in r. 6 (B) (i) with which we are directly concerned in the present appeal. Mr. Chandrachud has also argued that, having regard to the finding of fact which has been recorded in the judgment of Mr. Justice Vyas, the general observations made as to the *vires* of the Rule can be regarded as *obiter* and not binding on us. Perhaps it would be possible to distinguish this case on the ground suggested by Mr. Chandrachud. But we do not propose to adopt this course. The point which appears to have been decided in *Madan Dhanji's* case is of general importance, and, we think, if we were to take a contrary view in respect of another portion of the same Rule, it may lead to unnecessary confusion. Besides, we do not think that it would be desirable that we should differently construe the other words in s. 19 sub-s. (1) cl. (c) when our attention has been invited to this decision in which a contrary view appears to have been taken. That is why we propose to order that the papers in this case should be placed before the learned Chief Justice in order to enable him to direct that this question should be placed for decision before a larger Bench.

In *State v. Madan Dhanji*, the prosecution had relied upon the certificate of the Public Analyst which showed that the ghee in question had excess acidity of 1.8 per cent over the standard acidity of 2.8 per cent and this conclusion had been reached by the Public Analyst by the application of the relevant tests mentioned in r. 6 (B) (i). The learned Judges examined the evidence adduced by the prosecution and came to the conclusion that the "presence of ghee acidity does not mean that any thing had been added nor does it mean that anything has been abstracted". In view of this conclusion, Mr. Justice Vyas held that r. 6 (B) (i), in so far as the words "which has an acidity of more than 2.5 per cent calculated as Oleic Acid" were concerned, was *ultra vires*. According to Mr. Justice Vyas, the said Rule, in respect of the material words, would be *intra vires* only if the Court can be satisfied that, wherever there is deficiency in any of the normal constituents of ghee or wherever there is addition of extraneous matter to the normal constituents of ghee, there is necessarily an excess of acidity in ghee over the 2.5 per cent acidity. Mr. Justice Bavdekar

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who delivered a short concurring judgment, has put his view somewhat differently. He observed that, if the Public Analyst's evidence that an acidity of more than 2.5 per cent calculated as Oleic Acid does not necessarily show either deficiency in normal constituents or addition of extraneous matter is correct, then the part of r. 6 (B) (i) which contains the material words would seem to be *ultra vires* of the powers conferred by s. 19. The rest of the judgment delivered by Mr. Justice Bavdekar shows that he preferred to put his conclusion as to the *vires* of the Rule in cautious and somewhat halting terms.

The question which we are referring to a larger Bench really lies within a very narrow compass. Section 19 sub-s. (1) of the Act authorises the Government of Bombay to make rules not inconsistent with the provisions of the Act for the purposes mentioned in cls. (a) to (l) of the said sub-section. These rules have to be framed by the Government of Bombay after consultation with the local authorities concerned. For determining the *vires* of the Rule in question, it would be necessary to construe cls. (c) and (l) of s. 19, sub-s. (1). Clause (c) confers jurisdiction on the local Government to make rules for "Determining what deficiency in any of the normal constituents of any article of food or what addition of extraneous matter shall raise a presumption, until the contrary is proved, that such food is injurious to health within the meaning of s. 3 or is not of the nature, substance or quality it purports to be within the meaning of s. 4."

Clause (l) confers similar jurisdiction to make rules "generally for carrying out the provisions of the Act". Rule 6 (B) (1) has accordingly been framed by the local Government under s. 19 sub-s. (1). It reads thus:—

"The following articles of food shall be presumed, until the contrary is proved, to be not of the nature, substance or quality which they purport to be :

(i) Ghee which has a Butyro refractometer reading at 40° C of less than 40 or more than 44.5, or a Reichert Woollny value of less than 24, or which has an acidity of more than 2.5 per cent calculated as Oleic Acid."

It appears that the Rule in the present form was originally framed by the local Government on September 16, 1938. The present Rule in respect of the Surat Municipality was made on August 9, 1941. Incidentally, it may be mentioned that the validity of this Rule appears to have been challenged for the first time in *Madan Dhanji's* case. In discussing the question as to the validity of this Rule, I do not find any discussion about the construction of s. 19 sub-s. (1) in the judgments of Bavdekar and Vyas JJ. It would, however, be legitimate, I think, to assume that their conclusion was based upon what may be described as a literal construction of s. 19 (1) (c). They

appear to have held that a rule which can be framed by the local Government for raising a presumption must proceed on proof of deficiency in any of the normal constituents of the article of food or of addition of extraneous matter, and must be correlated with it. In other words, on this view, a rule may be framed raising a statutory presumption if it indicates the amount of deficiency or the amount of addition of extraneous matter which must be proved in order to raise the presumption. Since the Rule in question allows a presumption to be raised on the result flowing from the application of the tests stated in the Rule, in terms it does not comply with the requirements of s. 19 (1) (c). In point of fact, it was admitted by the Public Analyst in *Madan Dhanji's* case that the presence of ghee acidity does not mean that anything had been added, nor does it mean that anything had been abstracted; and so, on the merits, both the learned Judges held that it was not proper to raise a presumption merely because the application of the tests yielded the result mentioned in the Rule.

On the other hand, the argument which has been urged before us on behalf of the State is that it is perfectly competent to the Government of Bombay to assume that, if the application of certain well-known tests leads to certain results, an inference may be drawn that there is a deficiency in any of the normal constituents of the article of food or an addition of extraneous matter; and on such an inference being drawn, a presumption may be raised as contemplated by s. 19 (1) (c). If a particular test is applied and it leads to a specified result, that result *prima facie* shows, says Mr. Chandrachud, either the requisite deficiency or the requisite addition of extraneous matter as contemplated by s. 19 (1) (c), and so the Rule has been framed on the assumption that the specified result flowing from the application of the tests prescribed should raise the presumption as contemplated by s. 19 (1) (c). If s. 19 (1) (c) is capable of this construction, then the view taken by Bavdekar and Vyas JJ. may have to be reconsidered. Besides, in considering the validity of the Rule, it may perhaps be relevant and necessary to bear in mind the general powers conferred on the Government of Bombay for making rules under s. 19 (1) (1).

There is another point which may be relevant in this connection. The *vires* of a rule cannot be determined in the light of the evidence adduced in a particular case. The *vires* of the rule must inevitably be considered in the light of the power and authority conferred on the Government of Bombay under s. 19 (1). The presumption which is artificially raised by the statutory rule is a rebuttable presumption and that necessarily assumes that in some cases it may be rebutted by evidence led on behalf of the accused or even by the cross-examination of the Public Analyst. The fact that the statutory presumption

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has been rebutted in a given case would have no bearing on the question as to whether the rule allowing the presumption to be raised is valid or not. If the presumption allowed to be raised by the statutory rule was irrebuttable or conclusive, the position might have been different. It has been urged before us by Mr. Chandrachud that, if the view taken by Bavdekar, and Vyas, JJ. in respect of the last clause in r. 6 (B) (i) was to prevail, and if it is extended to the other clauses in the said Rule, that may tend to make the Rule virtually ineffective. If, in order to raise the statutory presumption under the Rule the prosecution has to prove independently of the application of the tests prescribed by the Rule the fact of deficiency or the addition of extraneous matter mentioned in s. 19 (1) (c), it would really be unnecessary to raise any artificial presumption at all. As soon as a deficiency is proved or the addition of extraneous matter is established, it would be open to the prosecution to urge that the proof of these facts shows that the article of food was injurious to health within the meaning of s. 3 or was not of the nature, substance or quality which it purports to be within the meaning of s. 4. This argument also may have to be considered in dealing with the validity of the Rule.

What the Rule purports to have done in effect is to raise, by necessary implication, an inference about the requisite deficiency or the addition of extraneous matter by taking recourse to the application of the prescribed tests, and it seems to provide that, if the results indicated in the Rule flow from the application of the tests, the presumption should be drawn under s. 19 (1) (c). That is one way of laying down that the results in question show the requisite deficiency in any of the normal constituents of any article of food or the requisite addition of extraneous matter as required by s. 19 (1) (c). The question is whether it was not permissible to the Government of Bombay to assume that the result flowing from the well-known tests would *prima facie* raise the inference to which I have just referred. In considering this question, it is important to remember that the presumption allowed to be raised by the Rule and the inference raised from the application of tests on which the said presumption rests are rebuttable; and if evidence is led to rebut the presumption or to challenge the validity of the inference assumed in the application of the Rule, the prosecution must fail. But if the validity of the inference raised by the Rule is successfully challenged by the presumption artificially raised is rebutted, that may not necessarily tend to make the Rule itself invalid. That is how the matter has been presented before us by Mr. Chandrachud. It would be possible to read the judgments delivered by Bavdekar and Vyas JJ. as showing that the learned Judges, on the

evidence, were satisfied that the presumption was rebutted. But, as I have already indicated, both the learned Judges have made observations of general nature, and since I am disposed to take the view that there is some force in the arguments urged before us by Mr. Chandrachud, I would, with respect to Baydekar and Vyas JJ., prefer that the merits of the controversy should be examined by a larger Bench. That is why I propose to make the order already indicated.

Incidentally, I may refer to another reported decision of this Court in *State v. Amratlal Bhogilal*⁽³⁾ where the same Rule has been considered. But the point that the Rule is *ultra vires* was not raised before me and Mr. Justice Chainani and we had proceeded to deal with the matter on the assumption that the Rule was *intra vires*.

Shah J.—Section 19 (1) of the Bombay Prevention of Adulteration Act authorises the State Government to frame rules by cl. (c) for determining what deficiency in any of the normal constituents of any article of food or what addition of extraneous matter shall raise a presumption, until the contrary is proved, that such food is injurious to health within the meaning of s. 3 or is not of the nature, substance or quality it purports to be within the meaning of s. 4, and by cl. (l) generally for carrying out the provisions of the Act. The rules framed under s. 19 may, therefore, provide for raising a rebuttable presumption that an article of food is injurious to health or is not of the nature, substance or quality it purports to be, dependent upon the extent of deficiency in any of the normal constituents of the article of food or upon the quantity of extraneous matter found in that article of food. But the fact that power is expressly conferred upon the State Government to frame a rule which enables a presumption to be raised depending upon the extent of deficiency in the normal constituents or the quantity of extraneous matter found does not apparently justify the view that the state Government has no authority to frame a rule which raises a presumption on proof of other facts that the article of food is not of the nature, substance or quality it purports to be. By cl. (l) the State Government is authorised to frame rules generally for carrying out the provisions of the Act. The authority given by that clause appears to include the power to frame rules enabling presumptions to be raised on proof of certain facts, and there is nothing in the other clauses of s. 19 (1) which restricts the authority of the State Government in framing a rule which enables a presumption to be raised otherwise than on proof of deficiency in any of the normal constituents or on proof of addition of extraneous matter. Again, the quantity of deficiency in the normal constituents or the quantity of addition of extraneous matter

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can also be a matter of presumption or inference and not necessarily a matter of direct proof.

The rule-making authority has, by r. 6 (B) (1) (i), provided that if ghee, an article of food, does not satisfy certain tests within the limits prescribed, it shall, until the contrary is proved, be presumed to be not of the nature, substance or quality which it purports to be. In *State v. Madan Dhanji*,⁽⁴⁾ it appears to have been assumed that the authority vested in the State Government to frame a rule raising a rebuttable presumption must be found in s. 19 (1) (c) of the Act, and must be circumscribed by the terms thereof. It was held in that case that before a presumption can be raised under s. 6 (B) (1) (i), the prosecution must establish by application of scientific tests or otherwise that there was a certain deficiency in the normal constituents of the article of food which is the subject-matter of the prosecution or there was addition of extraneous matter. But s. 19 (1) (c) does not restrict the authority of the State Government to frame rules enabling a presumption to be raised that an article of food is not of the nature, substance or quality which it purports to be, and it appears that r. 6 (B) (1) (i), which enables a presumption to be raised that ghee shall, until the contrary is proved, be presumed to be not of the nature, substance or quality, if it does not satisfy the tests specified therein within the prescribed limits, can competently be made under cl. (c) or cl. (e) of s. 19 sub-s. (1). As, however, implicit in the decision in *Madan Dhanji's* case appears to be the view that the authority of the State Government to frame the rule which justifies the raising of a presumption, must be found in s. 19 (1) (c) and the question is of some importance, I agree with my learned brother that the matter may be referred to a larger Bench.

The appeal was then heard by Chagla C. J., Gajendragadkar and Shah JJ.

H. M. Choksi, Government Pleader for the State.

Rajni Patel with V. B. Patel for the accused.

Chagla C. J.—The question referred to this Full Bench is whether r. 6 (B) (i) framed by the Government under the Bombay Prevention of Adulteration Act, 1925, is *ultra vires*.

The accused in the case which gives rise to this Full Bench was charged under s. 4 (1) (a) and (b) of the Bombay Prevention of Adulteration Act and he was convicted by the Special Judicial Magistrate, Surat. On appeal he was acquitted by the learned Sessions Judge and Government came here in appeal against the decision of the learned Sessions Judge, and the Bench dealing with this appeal found it necessary that in view of a certain judgment of this Court the question as to the *vires* of this rule should be considered by a Full Bench.

4. (1953) 56 Bom. L. R. 128.

The commodity in respect of which the accused was charged is ghee and when we turn to s. 4 the offence is constituted by selling or causing to be sold or offering for sale to the prejudice of the purchaser any article of food which is not of the nature, substance or quality demanded by or on behalf of the purchaser. There is an explanation to this section which provides that ghee or butter which contains any substance not exclusively derived from milk shall be deemed to be an article of food not of the nature, substance or quality it purports to be, and the case of the prosecution was that the ghee which the accused was selling or offering for sale contained a substance not exclusively derived from milk. Section 19 is the section which gives power to the Government to frame rules and the rule in question has been framed under sub-s. (1) (c) which authorises the Government to make rules for determining what deficiency in any of the normal constituents of any article of food or what addition of extraneous matter shall raise a presumption, until the contrary is proved, that such food is injurious to health within the meaning of s. 3 or is not of the nature, substance or quality it purports to be within the meaning of s. 4. Therefore, the power conferred upon the Government is to raise a statutory presumption. This section alters the rule of evidence which in a criminal trial casts the burden upon the prosecution and the rule would permit a presumption to be raised against the accused which would not be an irrebuttable presumption but which could be rebuttable by him and the presumption would be raised by determining the deficiency in the normal constituents of any article or the addition of extraneous matter in any particular article.

The rule in question which has been challenged is r. 6(B) (i) and it is to the following effect:

"The following articles of food shall be presumed, until the contrary is proved, to be not of the nature, substance or quality which they purport to be :—

(i) Ghee which has a Butyro refractometer reading at 40°C. of less than 40 or more than 44.5, or a Reichert Woolly value of less than 24, or which has an acidity of more than 2.5 per cent calculated as Oleic Acid."

The contention on behalf of the accused which has been put forward by Mr. Patel is that this rule does not raise the specific presumption which it is alone possible for Government to raise under s. 19 (1) (c). The argument is that the rule does not specify quantitatively either the deficiency in the normal constituents of an article or the addition of extraneous matter and what is urged is that it is only a presumption which quantitatively specifies either the deficiency or the addition which could be said to fall within the ambit of s. 19 (1) (c). What r. 6(B) (i) does is that instead of specifying the quantity it lays down a well-known and well accepted scientific

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test, the result of the application of which would be to show that extraneous matter was present in the ghee which was subjected to the test. It is significant to note that as far as ghee is concerned, the explanation to s. 4 makes it clear that the presence of any foreign matter in ghee or butter would render it an article not of the nature, substance or quality it purports to be. Therefore, it is not necessary for the prosecution in the case of adulteration of ghee or butter to establish that the adulteration was brought about by the presence of any specific quantity of foreign matter. The rule therefore, to the extent that it does not provide for the presence of any specific quantity of foreign matter, is consistent with the explanation. But what is urged by Mr. Patel is that inasmuch as it does not provide for the determination of the quantity of additional matter, it does not fall within s. 19 (1) (c) and the presumption raised is one which cannot be raised under that sub-section. It seems to us that if it is permissible to Government to frame a rule with regard to the quantity of extraneous matter and raise a presumption in connection therewith, it is equally open to Government to frame a rule with regard to the presence of any extraneous matter without specifying the quantity and raising a presumption in connection therewith. A wider power is given to Government with regard to the raising of presumption than has been exercised under r. 6 (B).

In the question referred to us we have to consider the vires of r. 6 (B) not merely with regard to the facts of this case but with regard to the nature of the rule itself. Section 19 (1) (c) permits Government to frame a rule either with regard to the quantity of the deficiency in any of the normal constituents of an article or a rule with regard to the addition of extraneous matter in any article, and in framing the rule it is open to Government either to specify the quantity of deficiency or the quantity of extraneous matter or to establish that there was any deficiency or that there was any addition of extraneous matter. We do not agree with Mr. Patel that a rule framed under s. 19 (1) (c) must specify both the deficiency in normal constituents and the addition of extraneous matter. The test laid down in r. 6 (B) (i) may show merely the presence of an extraneous matter; it may not show any deficiency in ghee or butter; even so the rule would be *intra vires* and within the ambit of s. 19 (1) (c).

Reference was made to a decision of this Court which had to consider this very rule. In *State v. Madan Dhanji*,⁽⁵⁾ Mr. Justice Bavdekar and Mr. Justice Vyas were considering this rule particularly with regard to the latter part of it which

provides for the presence of acidity of more than 2.5 per cent calculated as Oleic Acid, and the learned Judges came to the conclusion that the rule was *intra vires* in so far as the words "which has an acidity of more than 2.5 per cent calculated as Oleic Acid" are concerned, only if the Court is satisfied that whenever there is deficiency in any of the normal constituents of ghee or whenever there is addition of extraneous matter to the normal constituents of ghee, and there is necessarily an excess of acidity in ghee over 2.5 per cent acidity referred to in the rule. With very great respect to the learned Judges, it is difficult to understand how the *vires* of a rule can be determined *ad hoc* by reason of particular evidence being led or not led. Either a rule is *intra vires* or it is not and that question cannot possibly be decided on the facts of any particular case or on the evidence led in any particular case. The learned Judges also took the view that the test laid down in that rule did not comply with the provisions of s. 19 (1) (c). What the learned Judges overlooked, with respect, was that the validity of the test could be challenged by the accused, the presumption being rebuttable and not irrebuttable. The objection to the rule would have been serious if the test laid down in that rule had to be accepted by the accused and he had no right to challenge it. But by making the presumption rebuttable the Legislature has given the right to the accused either to challenge the quantity if laid down by the Government in the rule itself, or the test laid down by the Government which determines the very quantity which the rule postulates. Therefore, the evidence which Mr. Justice Bavdekar and Mr. Justice Vyas were considering does not go to determine the validity of the rule, but it is material and relevant to consider for the purpose of deciding whether the presumption has been rebutted or not. If the rule raises the presumption that foreign matter is present in the ghee if it has an acidity of more than 2.5 per cent calculated as Oleic Acid, then it is open to the accused in any particular case to rebut that presumption, and notwithstanding the test laid down in the rule it will be open to the Court to come to the conclusion that foreign matter was not present in the ghee by reason of the rebuttal of the presumption on the part of the accused. We are therefore, with respect, unable to agree with the view taken by Mr. Justice Bavdekar and Mr. Justice Vyas that any part of the rule is *ultra vires* or that any particular part is *intra vires* dependent upon the evidence led in any particular case.

Mr. Patel has also attempted to raise the larger question as to whether s. 19 (1) (c) constitutes delegated legislation. We should have thought it is rather late in the day in view of the recent elaborate judgment of the Supreme Court to raise that

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contention. The point has not been seriously pressed and it is unnecessary for us to decide it.

The result is that we must hold r. 6 (B) (i) framed under the Act as *intra vires* and valid.

Finding accordingly.

G. N. V.

APPELLATE CIVIL

FULL BENCH

Before Mr. M. C. Chagla, Chief Justice, Mr. Justice Gajendragadkar,
and Mr. Justice Dixit.

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PARAPPA NINGAPPA KHANDED, APPELLANT (ORIGINAL DEFENDANT
No. 2) v. MALLAPPA KALLAPPA KORE AND OTHERS, RESPONDENTS
(ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 1 AND 3).*

Hindu Law—Joint family property—Alienation by father—Alienation without legal necessity—Alienee's interest when son and wife successfully challenge the alienation.

In a suit by a Hindu son for partition and separate possession of his share after setting aside an alienation of joint family property made by his father, the mother who is a party to the suit is also entitled to a share if the alienation was not for a purpose binding upon the family consisting of the father, mother and son.

Sarkarchand Satidas v. Narayan Savla,⁽¹⁾ *Shantaya v. Mallappa,*⁽²⁾ *Hushensab v. Basappa,*⁽³⁾ *Ramchandra Mulchand v. Bhagwan,*⁽⁴⁾ *Naro Gopal v. Paragouda,*⁽⁵⁾ *Pratapmull Agarwalla v. Dhanabati Bibi,*⁽⁶⁾ discussed.

Baboo Hurdev v. Pundit Baboo,⁽⁷⁾ relied on.

FIRST Appeal against the decision of N. V. Ransubhe, Esquire, Civil Judge (Senior Division).

Suit for partition and possession of plaintiffs' shares in property alienated without legal necessity.

Plaintiffs Nos. 1 and 2 being the son and wife respectively of defendant No. 1 challenged an alienation by him of the joint family property in favour of defendant No. 2 as being without legal necessity and claimed a one-third share each in the said property. The Civil Judge, Senior Division, decreed the suit awarding possession of a one-third share in the property to

* First Appeal No. 253 of 1950 with F. A. No. 254 of 1950 and S. A. No. 207 of 1953.

1. (1950) 52 Bom. L. R. 888.

3. (1932) 34 Bom. L. R. 1325.

5. (1917) 41 Bom. 347.

2. (1938) 40 Bom. L. R. 1029.

4. (1946) 43 Bom. L. R. 594.

6. (1936) 38 Bom. L. R. 328.

7. (1883) L. R. 11 I. A. 26.