1936 *Present :* **Moseley J. and Fernando A.J.**

PERIA KARUPPAN CHETTIAR *v.* COMMISSIONER OF STAMPS.

8—D. C. Colombo, 6,447.

Estate duty—Hindu joint family—Business carried by a member—District property—Separate acquisitions—Burden of proof—Liability to estate duty.

A member of a Hindu joint family may carry on business by himself in such a way as to make that business or the profits of it his own property as distinct from the property of the family. The burden of proving that any particular property is joint family property rests on the party asserting it.

In order to establish that the property is joint it must be proved that it was purchased with joint family funds or that it was produced out of the joint family property or by joint labour.

Money received from an ancestor by way of gift or loan is not ancestral property as the term is understood in Hindu law.

THIS was an appeal from the assessment of estate duty made by the Commissioner of Stamps on the estate of one M. R. P. L. P. R. Muttu Karuppan Chettiar. The deceased, who left an estate consisting of movable and immovable property in Ceylon, carried on business at Colombo and Kandy. It was claimed for the deceased that he was the member of a Hindu joint family and that with regard to his movable property, the Hindu law applied. The learned District Judge held that the deceased was the owner and proprietor of the business carried on in Colombo under the *vilasam* M. R. P. L. P. R. and a half share of the business carried on at Kandy under the *vilasam* of M. R. P. L. M. T. T.; that the immovable property in Ceylon passed to his heirs on his death in accordance with the law of Ceylon and that the estate was liable to pay duty on its full value. With regard to movable property also he held that the estate duty was payable in respect of the entire interest which stood in the name of the deceased at the time of his death.

N. Nadarajah (with him *E. B. Wikramanayake*), for administrator, appellant.—Money that found nucleus of the capital of the firm in question was ancestral property. Income was assessed on that basis in India for the purpose of Income Tax. See documents A 5 to A 12. Returns were made on the basis that this firm was the property of a joint Hindu family. This system has been recognized in Ceylon. (*Adaicappa Chetty v. Cook & Sons*[1]; also *Annamalai Chetty v. Thornhill*[2].)

[*Basnayake* C.C. objects that the Court cannot consider Hindu law without evidence of that law being properly placed before the Court.]

Section 38 and 45 of the Evidence Ordinance deal with questions of foreign law. Any report purporting to be a ruling of a Court of such country would be relevant.

[1] *31 N. L. R. 385 at 405.*

[2] *29 N. L. R. 225 at 229.*

[*Basnayake C.C.*—The report must be duly produced. Section 38 merely says it is relevant. It must also be proved. The only method of proving it must be by production. Foreign law is not a question of law. It is a question of fact (*Rex v. Baba*[1]).]

No production is necessary. (*10 Calcutta 140; 38 Madras 466.*) Who can produce such a document except a witness? Crown Counsel himself cited Mulla in the lower Court. Our law is different from the English law in this respect.

[MOSELEY J.—Is not the objection purely technical?]

Basnayake C.C.—No. It is a question of evidence. Foreign law is a question of fact. The trial Judge should consider it and give his opinion.

The characteristics of the joint-family system are laid down in *11 Moore's Indian Appeals 75 at 89.* No member can say that he has a certain definite share except where the property is partitioned. There is community of interest and unity of possession. (*40 Calcutta 784.*) Where a member of such a family dies he does not die possessed of any property. The remaining members take by survivorship and not by succession. (*9 Moore's Indian Appeals 539 at 611.*) The deceased was a member of a joint Hindu family. Member of such a family can make a donation. Firm started with a donation from family funds.

Basnayake C.C., for respondent.—Evidence shows conclusively that deceased traded on his own and not as a member of a joint family. Conduct of deceased for the last twenty years shows it. It is not open to the appellant to plead that he made statements in ignorance of the law. See section 115 of Evidence Ordinance. If the appellant is a member of a joint Hindu family his position is not even now correctly put because he had some children living before his father died and they would also have some interest in the property. The contents of A5 to A12 have not been proved.

[MOSELEY J.—What was the object of the deceased in representing in India that he was a member of a joint Hindu family?]

There is no evidence that he did so. There is evidence that the Income Tax authorities treated him on that basis. A Hindu is not necessarily a member of a joint family. Even if he is, he may hold property that is not joint property. (*Mulla 237.*) He may have self-acquired property. The evidence in this case is that the property was self-acquired. (*Mulla 243, s. 223 (5).*) A person cannot alienate the joint property without the consent of the other members of the family. Ceylon Income Tax Ordinance contemplates property of joint family. (Section 2.) No such representation was made to the Ceylon Income Tax authorities. There was a partition of the ancestral property in 1918. Joint family does not raise a presumption of joint family property. (*Mulla p. 228, ss. 212 and 213.*) No evidence that property of this business was ancestral property. Evidence on the contrary is that appellant's father left no property in Ceylon. Appellant gave notice to the Registrar of Business Names of cessation of business. A joint Hindu business cannot cease. No presumption that a business carried on by a member of a joint family is a joint family business.

[1] *6 N. L. R. 35*

Nadarajah, in reply.—Indian Income Tax returns are not only admissible but relevant under section 13 (1) (*a*) of the Evidence Ordinance (*Lebbe v. Lebbe* [1]). (*Amir Ali, 9th ed., at 177.*) Section 32 (7) refers to section 13 (1). This is a statement by a person who cannot be called because he is not subject to the process of the Court. This is an instance of an assertion of a right. Father and manager of joint family can donate. (*Gour, para. 1267.*) An admission on a point of law does not bind a party in appeal. (*Eliatamby v. Gabriel* [2].)

Cur. adv. vult.

October 23, 1936. FERNANDO A.J.—

This is an appeal against the assessment of estate duty made by the Commissioner of Stamps, on the estate of M. R. P. L. P. R. Muttu Karuppan Chettiar who died in India on February 9, 1933. He left an estate consisting of movable and immovable property, and his heirs are said to be his two sons, Peria Karuppan Chettiar the administrator and Kumarappan Chettiar. The deceased carried on business in Ceylon, and it was stated by the appellant that he was entitled to a one-third share of the business carried on in Colombo under the *vilasam* M. R. P. L. P. R., and to one-sixth of the business carried on in Kandy under the *vilasam* M. R. P. L. M. T. T., and the case for the appellant was that the deceased was a member of a Hindu undivided joint family, whereas the Commissioner of Stamps appears to have made his assessment on the footing that the deceased was the sole proprietor of the business in Colombo and had a half share in the business carried on in Kandy.

The two firms M. R. P. L. P. R. and M. R. P. L. M. T. T. owned property in Ceylon both movable and immovable, and with regard to the immovable property it was admitted in appeal that that property would devolve on the heirs of the deceased according to the law of Ceylon, and the claim that the deceased was a member of a Hindu joint family was pressed only with regard to the movable property of the deceased, which it was submitted would be governed by the Hindu law.

At the inquiry in the District Court, it was proved that there was a business in Ceylon carried on by the deceased's father under the *vilasam* M. R. P. L. and that that business was wound up in 1918. The proprietors of that business according to the appellant were Periannan, the father of the deceased, and three uncles of the deceased named, Muttu Raman, Murugappa, and Muttu Karuppan, and the appellant's case is that in 1918 the business of M. R. P. L. was wound up and the four brothers started four separate firms one of which was M. R. P. L. P. R., which was started by Periannan the father of the deceased. The appellant then submits that the firm of M. R. P. L. P. R. started business with capital derived from the firm of M. R. P. L., and the assets taken from the firm of M. R. P. L. were ancestral property in the hands of the deceased, with the results that the business of M. R. P. L. P. R. must itself be regarded as ancestral property. He then submitted that Muttu Karuppan was the manager of a Hindu joint family and that his two sons the administrator and Kumarappan became entitled to share in the joint family business not by succession to Muttu Karuppan, but immediately on the dates of

[1] *2 C. A. C. I.*

[2] *25 N. L. R. 374.*

their respective births, that is to say, long before the death of Muttu Karuppan. At the time Muttu Karuppan died there were not only the two sons, the administrator and Kumarappan, but three grandsons of the deceased, namely, the sons of the administrator and Kumarappan who on this footing would all be entitled to shares in the business from the time of their respective births.

Even if we were to assume that Muttu Karuppan was a member of a Hindu joint family, it does not follow that all his property must necessarily be the property of that family, for it is admitted that a member of a Hindu joint family can carry on business by himself in such a way as to make that business, or the profits of it, his own property as distinct from the property of the family, and it was to meet this difficulty that the appellant contended that the assets with which the deceased started business in Ceylon as M. R. P. L. P. R. and M. R. P. L. M. T. T. were assets derived by him from his father and therefore ancestral property. It was contended on the other hand for the Commissioner of Stamps that the appellant himself in his original application to this Court for the grant of sole testamentary jurisdiction did not suggest that the deceased was a member of an undivided joint Hindu family, and that the deceased himself had transferred the business in Kandy apparently on the footing that it was his sole property. It was also proved that in D. C. No. 49,541, the appellant himself had given evidence on the footing that the business of M. R. P. L. P. R. was the sole business of his father, and it was contended for the Commissioner of Stamps that the conduct of the appellant and of his father indicated that the business in Ceylon was the sole property of the deceased. As far as the appellant was concerned, his Counsel relied on certain returns made by the deceased to the Income Tax Department in India during the years 1927 to 1934. After considering all the evidence placed before him, the learned District Judge held that the deceased was the owner and proprietor of the business carried on in Colombo under the *vilasam* M. R. P. L. P. R., and of a half share of the business carried on in Kandy under the name of M. R. P. L. M. T. T. He then proceeded to hold that the immovable property in Ceylon passed to the heirs of the deceased on his death in accordance with the law of Ceylon and that the estate was liable to pay estate duty on the full value of the immovable property owned by the deceased. With regard to the movable property, he held that estate duty was payable in respect of the entire interest which stood in the name of the deceased at the time of his death in the two firms M. R. P. L. P. R. and M. R. P. L. M. T. T.

With regard to the law that governs an undivided Hindu joint-family submissions were made by Counsel for the appellant in the District Court based on *Gour's Commentary on the Hindu Code,* and Counsel for the Commissioner of Stamps appears to have relied on certain passages in *Mulla's Hindu Law.* At the same time an objection appears to have been taken under section 38 and 45 of the Evidence Ordinance. Section 38 provides that when the Court has to form an opinon as to the law of any country any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, as well as any report of a ruling of the Courts of such country contained in a book purporting to be a report

of such rulings is relevant, and section 45 provides that with regard to foreign law, the opinions on the point of persons specially skilled in such foreign law are relevant facts. Counsel for the appellant referred to the cases of *Anamalai Chetty v. Thornhill* [1], and *Adaicappa Chetty v. Cook & Sons* [2]. In *Anamalai Chetty v. Thornhill* (*supra*) Schneider J. deals with some aspects of a Hindu joint family, and at page 229 he says that a Nattu Kottai Chetty is born into business and for business alone. At birth he acquires rights in his father's business as a member of a joint Hindu family. At an early age he takes an active part in the old business, and often also when quite young, starts a business of his own. In *Adaicappa Chetty v. Cook & Sons* (*supra*) Drieberg J. also appears to have recognized the existence of the joint Hindu family system among the Chetties, "they are Hindus from South India", he says, "among whom joint family system prevails". It is clear that the respondent and his father do not constitute a firm as it is defined in the Ordinance, that is to say, two or more individuals who have entered into partnership with one another with a view to carrying on business for profit. Such interest in the business as the respondent has was acquired at birth. It cannot be said that he and his father entered into partnership. In view of the provisions of the Evidence Ordinance and of these decisions and having regard to the fact that the learned District Judge appears to have examined the authorities that were cited before him, we indicated to Counsel during the argument that we would allow the passages in *Gour* and *Mulla*, which had been referred to in the District Court, and the reports of any cases in the Indian Courts on the joint Hindu family system to be cited before us for the purposes of this case, because it appeared to us necessary that we should consider the Hindu law on this point in order to see whether the appellant is entitled to succeed in his contention that the movable property in Ceylon of the deceased was not his sole property but the property of the joint Hindu family of which he is said to have been a member.

Now the contention for the appellant is that the deceased was a member of a joint undivided Hindu family. The learned District Judge whilst holding that the burden of proving that he was a member of a joint family was on the appellant, appears to have held or perhaps assumed that the deceased was a member of a joint Hindu family. The next question that arises is whether the property in question in this case, that is to say, the movable property of the firm M. R. P. L. P. R. and a half share of the property of the firm M. R. P. L. M. T. T. was the property of that joint Hindu family, and on this it is clear from the authorities that there is no presumption. "Assuming", says *Gour*, "that a family is normal and that as such it is presumably joint, it does not thence follow that it has joint property, since there is no presumption that every joint family necessarily possesses joint property. Consequently unless the nucleus of family property is admitted or proved the burden of proving the existence of joint property lies on the claimant. If in any case the plaintiff alleges that any property is joint property, it is for him to prove it, which he may do either by direct evidence proving that fact, or by the indirect evidence of establishing a nucleus and by the application of the

[1] *29 N. L. R. 225.*

[2] *31 N. L. R. 385.*

rule of the Hindu law that whatever has been acquired with the help of the nucleus becomes impressed with its own character". (Page 685, paragraph 1375.) *Mulla* adopts the same view at page 256. "There is no presumption that a family because it is joint possesses joint property or any property. The burden of proving that any particular property is joint family property rests on the party asserting it. To render the property joint, the plaintiff must prove that it was purchased with joint family funds, or that it was produced out of the joint family property, or by joint labour. None of these alternatives is a matter of legal presumption". He also states at page 257, that "a member of a joint family who engages in trade can make separate acquisitions of property for his own benefit; and unless it can be shown that the business grew from a nucleus of joint family property or that the earnings were blended with joint family estate, they remain his self-acquired property".

Assuming then that the deceased was a member of a joint Hindu family, the burden is on the appellant to show that the property in question was joint property, and for this purpose he must prove, either that it was purchased with joint family funds, or that it was produced out of the joint family property. Counsel for the appellant contended that there was proof in this case that the business of M. R. P. L. P. R. was started with funds that the deceased obtained from his father, and that the nucleus of the business was therefore ancestral property. The evidence seems to show that there were four brothers, Periannan, Muttu Raman, Murugappa, and Muttu Karuppan, who at one time carried on business together in Ceylon under the *vilasam* M. P. R. L. Of these four, Periannan was the father of the deceased Muttu Karuppan, and the evidence indicated that the joint business of the four brothers was wound up in 1918. Muttu Karuppan then started the business of M. R. P. L. P. R. by himself, and Counsel also referred to the fact that in the account books of the firm, there is an entry dated February 1, 1919, showing a sum of Rs. 31,091.45 as "credit from M. R. P. L.". He argued from this that M. R. P. L. was a business of four brothers who were all sons of Palaniappa Chettiar, and that the property with which Muttu Karuppan started business was his ancestral property; but the appellant in his evidence started that his grandfather died 10 or 12 years ago either in 1923 or in 1924, and left no property in Ceylon, so then when Muttu Karuppan started the business of M. R. P. L. P. R. in 1918, his grandfather Periannan was alive, and even assuming that Periannan allowed some of the money belonging to him as a member of M. R. P. L. to be used for the business that money must have been given to Muttu Karuppan by Periannan as a gift or possibly as a loan. In either event it is clear, that it was not ancestral property as that term is understood in the Hindu law. After considering the authorities, *Gour* at page 610 submits that an acquisition by gift from the father can no more be reasonably regarded as ancestral property than an acquisition from a stranger, and such an acquisition should then be presumed to be the son's self-acquired property, unless the gift is merely a mode of partition of the patrimony. According to *Mulla*, it may be said that the only property that can be called ancestral is property inherited by a person from his father, father's father, or father's father's father, excluding the doubltful case of property inherited

from a maternal grandfather. I would therefore hold that the appellant has failed to prove that the money with which the business of M. R. P. L. P. R. was started was ancestral property within the meaning of the Hindu law.

It seems also clear that both the appellant and his father dealt with the business in Kandy as the sole and exclusive property of Muttu Karuppan. The appellant is 33 years old and has been in Ceylon since 1918, except for several short periods in which he went back to India, but he says that he came to know that he and his father were members of an individual joint family only recently within the last year. It is true that on being pressed on this point he said, "All along in India I knew that my father and grandfather were members of an undivided joint family", but it is significant that in the application for letters of administration, he set out the details of the property of his father on the footing that that property was his sole property. Questioned with regard to his application and affidavit in connection with the testamentary case, he said, "I did not disclose that my father was a member of a joint Hindu family. I was not aware of it at that time". It is also admitted that the deceased Muttu Karuppan shortly before his death transferred his share of the business in Kandy to his two sons, a transaction which is inexplicable if Muttu Karuppan himself believed that that was the property of this joint family. As I have already stated there was nothing to prevent Muttu Karuppan carrying on business by himself, and if he did so that business would be his sole property. It is impossible to believe that his son who was his attorney in Ceylon for a number of years was not aware that the business was a joint family business, if in fact that was its character. Nor is it possible to understand how Muttu Karuppan could have dealt with his share of the Kandy business before his death, unless it is that he realized that the business was his sole business and could be dealt with by him at his will.

The documents A 5 to A 12 are copies issued by an officer of the Income Tax Department in India over certain assessment orders made in India with regard to the deceased Muttu Karuppan. In each of these copies there is a statement with regard to the status of Muttu Karuppan, and the status is given as a Hindu undivided family. The documents appear to have been tendered in the District Court on the footing that they were statements made by Muttu Karuppan himself, but an examination of the documents shows conclusively that they were not statements of Muttu Karuppan. Counsel in appeal suggested that they were admissible as statements made by the deceased against his own interest, and therefore admissible as statements under section 32 of the Evidence Ordinance, but I cannot see how these documents can be proved under section 32. It was then suggested that they were copies of a public record, and that the statement with regard to the Hindu undivided family must have been taken from a statement made by Muttu Karuppan, but there is the difficulty that assuming the statements to have been made by Muttu Karuppan, there is no proof that the statement was against his interest at the time he made it. We are not in a position to say whether in fact

such a statement if made by Muttu Karuppan would or would not result in the tax payable by him in India being reduced, because the property assessed was the property of a Hindu undivided family, and if the position is that by such a statement Muttu Karuppan tried to secure a lower rate of tax than otherwise, when the statement if made by him would be in his own interest, and not against it. It is extremely doubtful whether the documents are admissible at all, but even if they are admissible, they only prove that the immovable property in India in respect of which certain figures are entered as income for a year was the property of a Hindu undivided family, and that certain remittances made from Ceylon to India have also been accounted for as part of the income of that family. They do not in themselves enable us to decide whether in fact the business in Ceylon with which alone we are concerned was itself the property of a joint Hindu family or not.

Considering all the evidence in the case and the authorities, I come to the conclusion that the conduct of Muttu Karuppan and of the appellant himself proves conclusively that the business of M. R. P. L. P. R. and a half share of the business of M. R. P. L. M. T. T. was not a joint family business of Muttu Karuppan, but his sole business. I would accordingly dismiss this appeal with costs.

MOSELEY J.—I agree.

Appeal dismissed.