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Addanki Narayanappa & Another v. Bhaskara Krishnappa & Others

Andhra Pradesh High Court (Dec 8, 1958)

CASE NO.

S.A No. 845 of 1953

ADVOCATES

For the Appellant: A. Bhujanga Rao, Advocate.

JUDGES

Chandra Reddy, C.J

Satyanarayana Raju

Srinivasachari, JJ.

SUMMARY**Factual and Procedural Background**

This Second Appeal was brought by the plaintiffs against the decree of the District Judge of Chittoor dated 13th October 1952, which confirmed the decree of the Subordinate Judge dated 12th September 1951. Both decrees dismissed the plaintiffs' suit for partition and recovery of a share in certain immovable properties. The plaintiffs and some defendants belonged to the Addanki family, while others belonged to the Bhaskara family. These families had formed a partnership at will around 1926, engaged in hulling rice and decorticating groundnuts. On 2nd February 1949, the plaintiffs issued a notice of dissolution of the partnership and subsequently filed suit on 4th March 1949 claiming a one-fourth share in the properties alleged to belong to the firm.

The defendants resisted the suit primarily on the basis that the plaintiffs had relinquished their share under an unregistered deed (Exhibit B-18) dated 27th August 1936, executed by the plaintiffs and certain defendants in favor of the deceased first defendant. The courts below found the deed genuine, acted upon, and admissible in evidence despite objections by the plaintiffs. The main legal controversy concerned the admissibility of Exhibit B-18 under the Indian Registration Act due to its unregistered status.

Legal Issues Presented

1. Whether Exhibit B-18, an unregistered deed of relinquishment of a partner's share in partnership property including immoveable property, is admissible in evidence under Section 17(1)(b) of the Indian Registration Act.
2. Whether the interest of a partner in partnership assets that include immoveable property constitutes a right or interest in immoveable property requiring compulsory registration.
3. The effect of the change in law from the Indian Contract Act to the Indian Partnership Act on the question of dissolution of partnership upon a partner's retirement or relinquishment of share.
4. Whether the suit is barred by limitation if Exhibit B-18 is excluded from evidence.
5. The applicability of adverse possession claims by defendants based on Exhibit B-18.
6. Whether the conflict between previous decisions of the Madras High Court requires a Full Bench reference.

Arguments of the Parties

Appellant's Arguments

- Exhibit B-18 is not a genuine document, was not acted upon, and is inadmissible due to lack of registration under Section 49 of the Indian Registration Act.
- The entries in the firm's account books after the date of Exhibit B-18 show that the partnership business continued, negating the deed's effect.
- Due to conflicting decisions on registration, the matter should be referred to a Full Bench for authoritative guidance.
- The relinquishment under Exhibit B-18 involved transfer of immoveable property, which should require registration.

Respondent's Arguments

- Exhibit B-18 is genuine, was acted upon, and admissible despite being unregistered.
- Even if Exhibit B-18 is inadmissible, the suit is barred by limitation based on settlement of accounts and refusal of accounts by plaintiffs.
- Exhibit B-18 supports adverse possession claims by defendants for title perfection since 1936.
- The partnership was dissolved in 1941, barring the suit under limitation laws.

Table of Precedents Cited

Precedent	Rule or Principle Cited For	Application by the Court
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Venkataratnam v. Subbarao (1926 51 M.L.J 410)	Held that a partner's relinquishment of share in partnership does not require registration under the Indian Registration Act.	The Court acknowledged this decision but noted it was dissented from by a later Bench; the Full Bench ultimately agreed with this view.
R.N. Samuvier v. R.N. Ramasubbier (1931 60 M.L.J 527)	Held that a document assigning a partner's interest in immovable property upon dissolution requires registration.	The Court distinguished this case due to change in law; noted that under the Indian Partnership Act retirement does not ipso facto dissolve partnership, so this precedent may not apply.
Joharmal v. Tejram Jagrup (1893 I.L.R 17 Bom. 235)	Explained that a partner's share includes interest in immovable property and such instruments require registration.	Referenced as foundational authority supporting the registration requirement, but later decisions and statutory changes were considered more relevant.
Subbarayudu v. The State (1955 A.L.T 53)	Procedure for referring conflicting legal questions to a Full Bench.	The Court referred the registration question to a Full Bench in light of conflicting precedents.
Varada Pillai v. Jeevaratnammal	Use of documents to show adverse possession and perfection of title.	The Court found that adverse possession was not properly pleaded or made an issue, so this precedent did not support the respondents' claim.
Durga Das v. Jainarayan	Held that suits for dissolution of partnership are not suits for interest in immovable property under CPC Section 16.	Supported the view that partner's interest is personal and not an interest in immovable property requiring registration.
Sudarsana Maistri v. Narsimloo Maistry	Held that suits for share in partnership property including immovable property are governed by limitation rules applicable to partnership suits.	Supported limitation analysis and the concept that immovable property held by partnership does not confer individual immovable property rights on partners.
Alasyam Ramappa v. Tirumalappa	Held that a document effecting dissolution and	The Court distinguished this case from the present as there was no

	assigning immovable property shares requires registration.	dissolution of partnership here.
Secretary, Board of Revenue v. Alagappa Chettiar	Considered whether partners are co-owners of partnership property for stamp duty purposes.	The Court found this case not directly applicable to the registration issue before it.
Ajudhia Pershad v. Shamsundar	Held that a partner's interest in partnership assets including immovable property is moveable property.	The Court agreed with this position in determining the nature of the partner's interest.

Court's Reasoning and Analysis

The Court analyzed the nature of a partner's interest in partnership assets, including immovable property, in light of the Indian Partnership Act of 1932 and contrasted it with the earlier position under the Indian Contract Act. It held that a partner's share is not a direct interest in immovable property but a personal interest in the partnership assets after dissolution and liquidation. Therefore, a relinquishment of such a share does not operate to create, declare, assign, or extinguish a right in immovable property requiring registration under Section 17(1)(b) of the Indian Registration Act.

The Court noted conflicting precedents from the Madras High Court but concluded that the decision in *R.N. Samuvier v. R.N. Ramasubbier* was influenced by the law under the Contract Act, which has since been superseded. The retirement of a partner no longer ipso facto dissolves the partnership, distinguishing that precedent from the present facts.

The Court also rejected the respondents' contention that the suit was barred by limitation, finding that the evidence did not clearly establish dissolution or refusal of accounts sufficient to start limitation. The argument of adverse possession was found not to have been properly pleaded or contested.

Regarding the specific language in Exhibit B-18 concerning transfer of immovable property, the Court interpreted it as a recital of a past event and not a creation of new interest, thus not requiring registration.

Consequently, Exhibit B-18 was held admissible in evidence notwithstanding its unregistered status, and the appeal was dismissed.

Holding and Implications

The Court's final decision is **Appeal Dismissed**.

The Full Bench held that the interest of a partner in partnership assets, including

immoveable property, does not constitute a right or interest in immoveable property within the meaning of Section 17(1)(b) of the Indian Registration Act. Therefore, a document such as Exhibit B-18 relinquishing such interest does not require registration and is admissible in evidence even if unregistered.

This decision resolves the conflicting precedents by emphasizing the effect of the Indian Partnership Act and clarifies that the nature of a partner's interest is personal and moveable rather than proprietary in immoveable property. The direct consequence is that the plaintiffs' relinquishment under Exhibit B-18 stands valid and bars their claim to partition or recovery of share. No new precedent beyond this specific interpretation was established.

JUDGMENT

Krishna Rao, J.*:— This Second Appeal has been brought by the plaintiffs, against the decree of the District Judge of Chittoor, dated the 13th October, 1952, confirming the decree of the Subordinate Judge, dated the 12th September 1951, by which their suit for partition and recovery of a share in certain immoveable properties was dismissed. The two plaintiffs and defendants 10 to 12 belong to the Addanki family and defendants 1 to 9 belong to the Bhaskara family. These families founded a partnership at will in or about the year 1926 and carried on business in hulling rice and decorticating groundnuts for a number of years. On 2nd February, 1949, the plaintiffs issued a notice of dissolution of the partnership, Exhibit A-15, and on 4th March, 1949, instituted the suit claiming a $\frac{1}{4}$ th share in the plaint properties alleged to belong to the firm. The suit was resisted by defendants 5 to 9 mainly on the ground that the plaintiffs had relinquished their share under an unregistered karar Exhibit B-18, dated 27th August, 1936, executed by them and by defendants 10 to 12 in favour of the deceased first defendant, who was the father of defendants 5 to 9. Exhibit B-18 is in the following terms:

“You and we have been jointly carrying on groundnut machine, mandi and other business in Mulakalacheruvu. In the business, not only outstandings remained uncollected, but also loss was sustained. As disputes have arisen in our family regarding partition, it is not possible to carry on the business or to make investment in future. Moreover, you yourself have undertaken to discharge some of the debts payable by us in the coastal parts in connection with our private business. Therefore, from this day onwards, we have given up (our) share in the machine, etc., and in the business, and we have made over the same to you alone completely by way of adjustment. You yourself shall carry on the business without ourselves having anything to do with the profit and loss. Herefor, you have given up to us the property forming our Venkatasubbayya's share which you have purchased and delivered possession of the same to us even previously. In case you want to execute and deliver a proper document in respect of the share which we have given up to you, we shall at your own expenses, execute and deliver a document registered. To this effect is this karar deed got written by Ramiah out of us and delivered with our consent.”

2. The plaintiffs contended that Exhibit B-18 is not a genuine document, that it was not acted upon and that it is inadmissible in evidence as it was not registered. These objections

were negated by both the Courts below. With regard to the genuineness of Exhibit B-18 the first plaintiff admitted his signature in it and the scribe D.W 2 proved its execution by the plaintiffs and defendants 10 to 12. The learned counsel for the appellant concedes that the concurrent finding of the Courts below in favour of the genuineness of the document is a finding of fact, which he cannot canvass in Second Appeal. On the question whether Exhibit B-18 was acted upon, the learned counsel relies on certain entries in the account-books of the firm made between 1937 and 1940 which according to him, show that the partnership business was carried on after the date of Exhibit B-18. These entries were considered by the Courts below and were held to be mere book entries of adjustments, as contended by the defendants. The first plaintiff himself admitted in the course of the cross-examination, “the business was stopped in 1937. We looked into accounts in 1940. The entries subsequent to February, 1937, are adjustment entries”. In view of this unequivocal admission, there is no force in the learned counsel's contention that the entries intrinsically show that the business of the partnership was continued in spite of Exhibit B-18. The finding of the Courts below that Exhibit B-18 was acted upon is also a finding of fact, which is supported by evidence and which cannot be assailed in Second Appeal.

3. The main objection of the learned counsel is that Exhibit B-18 is inadmissible in evidence under [Section 49 of the Indian Registration Act](#). It is not disputed that the value of the share of the immoveable property belonging to the firm which is purported to have been relinquished and assigned to the first defendant under Exhibit B-18, exceeded Rs. 100. In **Venkataratnam v. Subbarao**, [1926 51 M.L.J 410](#) it was held by a Division Bench of the Madras High Court that a document of the nature of Exhibit B-18 does not require registration. This decision was dissented from by another Division Bench of the same High Court in [R.N. Samuvier v. R.N. Ramasubbier](#), [1931 60 M.L.J 527](#). The decision of the later Bench was based on the position explained by Telang, J., in **Joharmal v. Tejram Jagrup**, [1893 I.L.R 17 Bom. 235 at 356](#). as follows:—

“Although a partner's share does not include any specific item of the partnership property, still where the partnership is entitled to immoveable property, such share does include an interest in immoveable property, and, therefore, every instrument operating to create or transfer a right to such a share requires to be registered under our Registration Act.”

4. The Courts below preferred to follow the decision in **Venkataratnam v. Subbarao**. Sri A. Kuppaswamy, the learned counsel for the appellants, urges that as there is a conflict of Bench decisions, the question should be referred to a Full Bench as laid down in **Subbarayudu v. The State**, [1955 A.L.T 53](#).

5. Sri A. Bhujanga Rao, the learned counsel for the respondents, has contended that even if Exhibit B-18 is inadmissible in evidence, the decision of the Courts below could be supported on the ground that the suit is barred by limitation. He points out that the first Court found that the accounts were looked into in 1940 or 1941 with a view to settle the accounts between the members of the partnership and drew the inference that there was a dissolution of the partnership at any rate in the year 1941, with the result that the suit is barred under **Article 106 of the Limitation Act**. But the lower appellate Court has

hesitated to agree with this finding as immovable properties were left out of consideration and there could have been no complete or final settlement of accounts in 1940 or 1941 unless Exhibit B-18, operated as a valid relinquishment of the plaintiff's interest, in the immovable properties. It follows that if Exhibit B-18 is inadmissible in evidence the incomplete settlement of accounts cannot be said to point to an inference of dissolution. Another ground of limitation is based on the lower appellate Court's finding that the first plaintiff asked defendants 1 and 5 in 1940 for accounts and as they refused, time began to run under **Article 120 of the Limitation Act**. But the first plaintiff's evidence was that even after 1940, he asked for accounts every year and the fifth defendant was postponing. There appears to have been no such refusal as to lead to an inference that the plaintiffs were excluded from the partnership in 1940 and a right accrued to them to sue for dissolution and accounts. It has to be noticed that the contesting defendants did not put forward a case of settlement or refusal of accounts. They relied only on the relinquishment in favour of the first defendant under Exhibit B-18. The fifth defendant admitted in his evidence that accounts were not settled at the time of Exhibit B-18. As regards the looking into the accounts in 1940 or 1941, his version was that the purpose was to find out how much was to be paid to Addanki family in connection with the disputes inter se defendants 1 to 9. I am unable to agree with Sri A. Bhujanga Rao that the suit is clearly shown to be barred by limitation, even if Exhibit B-18 is excluded from the evidence.

6. Another contention of Sri A. Bhujanga Rao is that on the authority of the decision in **Varada Pillai v. Jeevaratnammal Exhibit B-18** is admissible to show the character of the contesting defendants' possession and that they have perfected their title to the immovable property by adverse possession since 26th August, 1936, the date of Exhibit B-18. No doubt there was a vague plea in paragraph 19 of the written statement of defendants 5 to 9 that they perfected their title by adverse possession. But it was not possessed to an issue in the trial Court nor raised in the appellate Court. Prima facie their possession cannot be deemed to be adverse, as they were in possession prior to Exhibit B-18 as partners and co-owners and merely continued in possession thereafter.

7. In the circumstances, the question "Is Exhibit B-18 admissible in evidence?" becomes material for a decision of the appeal. Owing to the conflict on the point between the view in Venkatarathnam v. Subba Rao, and [R.N. Samuvier v. R.N. Ramasubbier](#), the matter has to be referred to a Full Bench and the papers will be placed before my Lord the Chief Justice for the purpose.

OPINION

The opinion of the Full Bench was pronounced by

Srinivasachari, J.:— This case has come before the Full Bench on a reference made by our learned brother Krishna Rao, J., in a Second Appeal heard by the learned Judge. The appeal arises out of a suit for partition and recovery of a share in certain immovable properties or in the alternative for dissolution of partnership and for taking of accounts. Plaintiffs 1 and 2 and defendants 10 to 12 belong to one family, viz., Addanki family, while defendants 1 to 9 belong to another family, viz., Bhaskara family. These families

founded a partnership at will somewhere in 1926 and carried on business in hulling rice and decorticating groundnuts. On 2nd February, 1949, the plaintiffs issued a notice of dissolution of partnership being Exhibit A-15 in the case. Thereafter on 4th March, 1949, they filed the present suit claiming a one fourth share in the properties belonging to the firm. The main objection of the defendants to this suit was that the plaintiffs had relinquished their share under Exhibit B-18, dated 27th August, 1936, under an unregistered karar. The plaintiffs in reply stated that Exhibit B-18 was not a genuine document, that it was not acted upon and above all, that it was inadmissible in evidence for want of registration. These legal objections were found against by the Courts below. The execution of the document however, was held to be proved. When the matter came up in Second Appeal, the question about the genuineness of the document was not canvassed, there having been a concurrent finding of its having been executed. The question as to whether it was acted upon was also not pressed and the only objection on which arguments were advanced before the learned Judge was that the document was inadmissible in evidence, for want of registration.

9. It is admitted that what the plaintiffs purported to relinquish and assign to the first defendant under Exhibit B-18 related to property worth more than Rs. 100. It may be mentioned that the Madras. High Court in an earlier case in **Venkataratnam v. Subbarao** held the view that a document which is executed by a partner of a partnership whereby he relinquishes his share in the partnership does not amount to an extinguishment of his interest in the partnership property and does not fall under **Section 17(1)(b) of the Indian Registration Act**. The learned Judges held that although the partnership might hold immoveable property the relinquishment would not amount to his having given up his interest in the immoveable property, for, although the property held by a partnership is regarded in law as partnership property and not that of any individual and the partner is only entitled to a share in the partnership assets after dissolution, it could not be predicated that he would have, necessarily, on a dissolution an interest in the immoveable property, for it might happen that at the time of the dissolution after converting all property, the adjustment would be by payment of the debts due by the partnership, next the payment of advance made by the partners and the residue, if any, to be divided amongst the partners. This view of the learned Judges was dissented from in a subsequent case of the same High Court in [R.N. Samuvier v. R.N. Ramasubbier](#). In view of the conflicting decisions the learned Judge thought that the matter should be considered by a Full Bench and an authoritative pronouncement given. Hence this reference to the Full Bench.

10. The relevant provision of the Registration Act which makes registration of documents pertaining to immoveable property compulsory and which applies to this case is **Section 17(1)(b)**, which is as follows:

“17(1)(b): Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property.”

11. By the document Exhibit B-18 the plaintiffs declared that they give up their share in the machine, etc., and in the business and also made over the same to the other partners alone completely by way of adjustment. The document also says that the other partners shall carry on business without the plaintiffs having anything to do with the profit and loss. It further recites that the other partners have given the plaintiffs property forming one Venkatasubbaiah's share previously. Having regard to the tenor of the document, it is contended by the learned counsel for the appellant that it operates to extinguish the right of the plaintiffs in immoveable property and as such it clearly fell within the purview of **Section 17(1)(b) of the Registration Act**. There can be no doubt that if by this document the interest in immoveable property is sought to be extinguished then it is compulsorily registrable. The question, therefore, is what is the nature of the interest of a partner in the partnership property, where the partnership property consists of moveable and immoveable property. Would the relinquishment of a share by a partner amount to a relinquishment of a right or interest in immoveable property or could it be described as a benefit arising out of land within the meaning of immoveable property as defined in Sec. 3 of the General Clauses Act? It has to be observed that the law relating to partnership has now been embodied in the **Partnership Act IX of 1932**. **Prior to this Act** the law relating to partners and their rights inter se was governed by Chapter XI of the **Indian Contract Act** (as it then [stood](#)), [Section 253 of the Contract Act](#) related to the rights determining the partners' mutual relations and **sub-section (7) of Section 253** enacted that if from any cause whatsoever any member of partnership ceases to be so, the partnership automatically dissolves as between all other members. While this was the position under the Contract Act, such a position does not arise under the **Indian Partnership Act**. There is no dissolution of the partnership as such on one of the partners retiring from the partnership.

12. It would be useful to consider the position in law of the right of the share of a partner in a partnership, for, that would determine as to whether it is moveable or immoveable property. What is the concept in law of a share of a partner in a partnership?

13. So far as English law is concerned it may be taken to be settled, that a partner has no interest in "Partnership Realty" as distinguished from the money arising from its sale. The share of a partner, therefore, is nothing more than his proportionate share of the partnership assets after they have been turned into money and applied in liquidation of the debts of the partnership. Further, in equity whether the assets of a partnership consist of land or not the share in a partnership must be deemed to be personal and not real estate. No doubt, the tendency of decisions in England has been to bring partnership agreements conveying interests in land along with other assets within Section 4 of the Statute of Frauds.

14. It may be said that the rule adopted by English Courts is that real estate intended by the partners to constitute a part of the partnership property or treated by them as belonging to the partnership is regarded in equity as converted into personality for all purposes, and also for the settlement of the claims of the partners inter se. The law in India is not different. **Sections 14 and 15 of the Indian Partnership Act of 1932** speak about what would constitute the property of a firm and declare that such property shall be held and utilised for the purposes of the partnership thereby indicating that so long as the partnership

continues no part of the assets of a partnership could be regarded as belonging to any individual partner. Further, no part of the partnership assets could be utilised for a purpose other than that of the partnership. A partner, therefore, seeking to get his share could not get his share in specie in the moveable and immoveable properties but only after the assets have been converted into money, debts and liabilities discharged and it is only in the residue that he could get his proportionate share. The statute enjoins this process being gone through before a partner gets a share in the assets of the partnership and it is governed by **Sections 46, 48 and 49 of the Partnership Act**. It would, therefore, follow that a partner cannot predicate of a definite share in immoveable property which he could transfer or give up.

15. Questions have arisen incidentally though not directly in this form, but the decisions in those cases lend further support to the view that the interest of a partner under the partnership assets which include immoveable property can not be regarded as an interest in immoveable property. In a suit for dissolution of partnership which owned a factory, the question arose as to whether the suit fell under [clause \(a\) or \(d\) of Section 16, Civil Procedure Code](#). It was held that a suit for dissolution of partnership was not a suit for the determination of any right to or interest in immoveable property within the meaning of [clause \(a\) or \(d\) of Section 16, Civil Procedure Code](#). **Vide Durga Das v. Jainarayan**, the ratio decidendi of this decision being that a decree could only be for the immoveable property belonging to a partnership being sold and the sale proceeds being disposed of in accordance with the [rule in Section 46 of the Partnership Act](#) and the plaintiff given his share in the residue. In the case of **Sudarsana Maistri v. Narsimloo Maistry**, before the Madras High Court the plaintiff filed a suit for a share in the partnership property which consisted of immoveable property as part of the partnership assets. The defence to the suit was that the suit was barred by limitation. This plea was met by the argument that the suit must be regarded as a suit for a share in immoveable property purchased by the partner from the profits of the partnership and therefore no question of limitation arose. Sir Arnold White, C.J, and Bashyam Ayyangar, J., held that it was partnership property alone. They further held that although immoveable property were comprised in the properties of the partnership a suit for dissolution of partnership would be governed by the three-year rule.

16. In **Venkataratnam v. Subbarao** the question for decision was whether a release by a partner of his share in the partnership property evidenced by a deed was compulsorily registrable under [Section 17 of the Registration Act. Phillips](#) and Madhavan Nair, JJ., observed that when a partner retires from a partnership by releasing his rights therein, the property still remains the property of the partnership, and the action in releasing his rights does not actually extinguish his right in the immoveable property. The reason for this, according to the learned Judges, was that the partner was merely receiving his share of the assets on going out of the partnership and the immoveable property still remains the property of the partnership as before. This matter came up for consideration in the Case of [R.N. Samuvier v. R.N. Ramasubbier](#) and Curgenven and Cornish, JJ., were reluctant to follow the view taken in the earlier case. Here in this case the plaintiff and the defendant were partners in a money-lending business and also a chit fund business. The two firms

had dealings each with the other. The partners of the two firms happened to be brothers. Disagreement arose between the brothers and by an agreement Exhibit K, the plaintiff purported to take over the defendant's interest in the money-lending business under the name V.S.R.S Firm while the interest of the plaintiff in the other firm, viz., R.S Firm was assigned to the defendant. The defendant also accepted liability for a sum of Rs. 13,000 due by the R.S Firm to the V.S.R.S Firm. Later on another partner who had a half share in the V.S.R.S Firm and the plaintiff dissolved their partnership and it was arranged that the debt due from the R.S Firm should be taken over by the plaintiff. The plaintiff tried to recover this amount. Among the various objections raised by the defendant, one was that the document Exhibit K under which the defendant took over the liability of the R.S Firm was compulsorily registrable and, therefore, could not be received as evidence of any transaction affecting immovable property. The learned Judges did not agree with the view taken in **Venkataratnam v. Subbarao** for the reason that according to them in that case the **provisions of Section 253(7) of the Contract Act** were not considered and lost sight of. Section 253(7) says:

“If from any cause whatsoever any member of a partnership ceases to be so, the partnership is dissolved as between all the other members.”

17. The learned Judges who decided the case of [R.N. Samuvier v. R.N. Ramasubbier](#) opined that where there was a partnership of three persons and one went out the whole partnership was dissolved and if the two remaining persons resume business as the partners it would only be by the formation, tacit or express, of fresh partnership. They further observed that if the original partnership of three held immovable property and it afterwards vests in the new partnership of two, it can only be by a transfer of interest from the one to the other. The matter incidentally arose in **Panjam Thirumalappa v. Alasyam Ramappa. Varadachariar**, J., while adverting to [Section 253 of the Contract Act](#) stated that all immovable property purchased with partnership funds must be deemed to be held by the partners as joint owners. The learned Judge further observed that on a dissolution, when the partners settle their affairs they may either allot to one or either of them particular items in entirety or in varying shares not necessarily in the particular proportion of the share of each partner in the whole partnership property. The following observations of the learned Judge are significant:

“There is much to be said in favour of the view taken in [R.N. Samuvier v. R.N. Ramasubbier](#), that the question of registration may arise in such cases though there is also authority to the contrary.”

18. This observation of the learned Judge would clearly indicate that the question of registration does not automatically arise when a partner releases his share in the partnership assets containing immovable property. It is dependent, therefore, on how the matters are settled at the time of the dissolution. This case came on appeal before a Bench consisting of Sir Lionel Leach, C.J, and Somayya, J., in **Alasyam Ramappa v. Tirumalappa**. The learned Judges allowed the appeal and held that the document Exhibit A which set out the terms of the dissolution and was signed by all the partners and which

declared that three partners have rights for equal shares to the lands (the suit properties) was compulsorily registrable and not being registered was inadmissible in evidence. The learned Judges observed that until an account had been taken and provision made for the discharge of the liabilities, no partner could be claimed to be entitled to have a definite share in a particular asset. But in this case as it happened that on a dissolution the remaining assets which included immoveable property were divided among the partners in equal shares and as that document declared that each one of the partners was entitled to a share in the immovable property that remained after the taking of accounts, they held [Section 17 of the Registration Act](#) applied. In our opinion this case is distinguishable from the case before us for the reason that there has been no dissolution of the partnership as such. We may point out that in the case of [R.N. Samuvier v. R.N. Ramasubbier](#), the document was an agreement whereby the partnership was dissolved and by the severance of their interests, specified assets in the two distinct partnerships were assigned to each of them and these assets included immoveable property and under those circumstances, where the assets were assigned to the individual partners who retired, it amounted to a declaration of a right in immoveable property and as it affected immoveable property the document was compulsorily registrable. The learned Judges deciding that case in not approving the previous decision in **Venkatratnam v. Subbarao** were influenced by the fact that the former decision did not take note of the **provisions of Section 253(7) of the Contract Act** whereby a complete dissolution followed on the retirement of a partner, for their Lordships observed as follows:

“In **Venkalaratnam v. Subbrao Phillips and Madhavan Nair**, JJ., have held that a document of the nature of Exhibit K does not require registration, but with all respect I am unable to adopt the reasoning upon which the decision is based. The theory underlying is that both before and after a partner releases his rights the property is and still remains the property of the ‘partnership’ meaning by the phrase, I think the learned Judges would have conceded a legal entity which does not itself undergo change. But this is surely to lose sight of the fact that if from any cause whatsoever any member of a partnership ceases to be so, the partnership is dissolved as between all other members—contract Act, Section 253(7).”

19. The reason why the learned judges who decided the case of Samuvier v. Rama subbier, thought that there was no analogy between the transfer of shares of a joint stock company and that in a partnership is that in the latter case release of a partner's share would result in a dissolution of the partnership whereas the case was different with regard to joint stock companies.

20. This distinction, we must point out, has now vanished with the change in the Law of Partnership under which the retirement of a partner does not ipso facto bring about a dissolution of the partnership.

21. Consequently it may be stated that the principle underlying the decision in [R.N. Samuvier v. R.N. Ramasubbier](#) may not hold good after the change in the Law of Partnership.

22. Our attention was invited by the learned counsel for the appellant to a Full Bench decision of the Madras High Court in Secretary, **Board of Revenue v. Alagappa Chettiar**. There, the question was as to whether a particular document fell within the definition of an instrument of partition within **Section 2(15) of the Stamp Act** and it was argued that the document could not be regarded as an instrument of partition, because it would not be proper to regard partners as co-owners of the partnership property. While dealing with this argument the learned Judges of the Full Bench referred to both the earlier cases of the Madras High Court and only observed that [Section 253 of the Contract Act](#) declared the partners to be joint owners of the partnership property. They stated that the wording of [Section 14 of the Partnership Act of 1932](#) which replaced the provisions of law of partnership in the Contract Act though slightly different did not make any difference in principle. We do not think that decision dealt with the question directly at issue in this case and, therefore, is not in point.

23. In determining whether transfers of shares of partnerships which hold immovable property among other assets, require registration the Court must be influenced by the policy of the Partnership Act. The legal conception of the share of a partner in a partnership cannot be assessed, in our opinion, by reference to the possibility of his getting a share in the immovable property possessed by the partnership, for his getting a share in the immovable property is only an uncertain factor.

24. A Full Bench of the Lahore High Court in the case of **Ajudhia Pershad v. Shamsundar** held that the interest of a partner in partnership assets comprising of moveable and immovable property would be treated as moveable property. We are in agreement with the view expressed in the above.

25. Our answer to the question referred to is that the interest of a partner in partnership assets cannot be regarded as a right or interest in immovable property within the meaning of **Section 17(1)(b) of the Registration Act**.

Reference answered.

JUDGMENT

(Krishna Rao, J.) The Full Bench has held that the interest of a partner in partnership assets cannot be regarded as a right or interest in immovable property within the meaning of **Section 17(1) (b) of the Registration Act**. It follows that in so far as there is a relinquishment of their interest in the suit firm, by the plaintiffs and defendants 10 to 12 who executed Exhibit B-18 the document does not require registration. Sri A. Kuppaswamy contends that this does not conclude the matter, because the consideration for the relinquishment was the transfer by the first, defendant of certain immovable property. He relies on the sentence in Exhibit B-18:

“Herefor, you have given up to us the property forming our Venkatasubbayya's share which, you have purchased and delivered possession of the same to us even previously”

27. and urges that this amounts to a creation of interest in immovable property by the first

defendant. In my opinion, such a construction of the sentence cannot be supported. The giving up of the property is clearly mentioned as a past event. The first defendant who give up the property did not execute exhibit B-18. The sentence cannot, therefore, be construed as anything more than a recital of a past event. There was no creation of any interest in immoveable property under the document Exhibit B-18, within the meaning of **Section 17(1)(b) of the Registration Act**, because that could have happened only by a document executed by the first defendant. It follows that Exhibit B-18 does not require registration and was rightly admitted in evidence.

28. It is not disputed that if Exhibit B-18 is treated as evidence in the case, the appeal must fail. The appeal is accordingly dismissed with costs. No leave.

29. As there was a reference to Full Bench an additional sum of Rs. 100 is allowed as advocate's fee under **Rule 46 of the Practitioners' Fees Rules** besides the usual fee.

Ch. R.

30. Appeal dismissed.