An uncommunicated declaration is no better than a mere formation or harbouring of an intention to separate. It becomes effective as a declaration only after its communication to the person or persons who would be affected thereby.

[CASE BRIEF] ADDAGADA RAGHAVAMMA AND ANR. Vs. ADDAGADA CHENCHAMMA AND ANR.

Case name	ADDAGADA RAGHAVAMMA AND ANR. Vs. ADDAGADA CHENCHAMMA AND ANR.
Case number	1964 AIR 136 , 1964 SCR (2) 933 (Civil Appeal No. 165 of 61)
Court	The Supreme Court of India
Bench	Justices Subbarao, K. Dayal, Raghubar Mudholkar, J.R.
Decided on	09/04/1963
Relevant Act/Sections	Article 133 of the Constitution of India , Hindu Succession Act,1956. Hindu Adoption and Maintenance Act,1956.

➢ Brief Facts and Procedural History:-

1. The appellants and the respondents trace their interest and rights through their geneology to one, Veeranna who died in 1906. One of his sons Pitchayya, predeceased him in 1905 and it is alleged that sometime before his death Pitchayya took Venkayya, the son of his brother Chimpirayya, in adoption. It is further alleged that a partition of the joint family properties between Veeranna and his four sons took place. Venkayya died in 1938 having a son Subbarao. Chimpirayya died in 1945 having executed a will whereunder he gave his properties in equal shares to Subbarao and Kamalamma, the daughter of his predeceased daughter. He also directed Raghavamma, the wife of his brother Pitchayya, to take possession of the entire property belonging to him, manage it and to hand over the same to his two grand children when they attained majority. Chimpirayya excluded his daughter-in-law Chenchamma from management as well as inheritance. But Raghavamma allowed Chenchamma to take possession of the property. Subbarao died in 1949.
2. In 1930, Raghavamma filed a suit for possession of the property impleading Chenchamma as the first defendant, Kamalamma as the second defendant and Punnayya as the third defendant. Chenchamma, the first defendant and the present first respondent, contended that Venkayya was

not given in adoption and that there was no partition as alleged by the plaintiff. She averred that Chimpirayya died undivided from his grandson Subbarao and therefore, Subbarao became entitled to all the properties of the joint family by right of survivorship.

3. The trial Judge came to the conclusion that the plaintiff had not established adoption of Venkayya by her husband Pitchayya and that she also failed to prove that Chimpirayya and Pitchayya were divided from each other and in the result dismissed the suit. On appeal, the High. Court upheld the above two findings of the trial judge.
4. Although, A new contention was raised by the appellant before the High Court that the will executed by Chimpirayya contained a clear intention to divide and that this declaration constituted a severance in status enabling him to execute a will. Thus, we have the present appeal against the judgement of the High Court .

➢ Issues before the Court:

1. Whether the adoption of Venkayya was true and valid.
2. Whether Pitchayya and Chimpirayya were divided as alleged by the plaintiff.
3. Whether a member of a joint Hindu family becomes separated from the other members of the family by a mere declaration of his unequivocal intention to divide from the family without bringing the same to the knowledge of the other member of the family

➢ Ratio of the Court:

1. For the first issue, the burden of proof has rightly been placed on the plaintiff. The circumstances during that time were as follows:-

    a. *Chimpirayya was about 40 years old; he had only one son, Venkayya, who was aged about 2 years Pitchayya was about 25 years old and, therefore, ordinarily he had every prospect of having children of his own; it is, therefore highly improbable, unless there are special circumstances, that an only son of an elder brother was taken in adoption by his younger brother; though there is no legal prohibition, it is well known that ordinarily an only son is neither given nor taken in adoption'. It was admitted that Addagada family is a prominent and affluent family in the village. But curiously no document of adoption was executed, no invitations were sent to relatives and village officers, and no expenditure incurred in connection with the adoption was entered in the accounts. Unless there were compelling and*

extraordinary circumstances which necessitated dispensing with all formalities, it is unthinkable that in a village there could have been an adoption made in such an affluent family without pomp and show.

2. The appellant and the first respondent relied upon the conduct of the parties subsequent to the alleged adoption and filed a number of documents to support their respective cases. Till 1911 there was no document recording the fact that Venkayya was the adopted son of Pitchayya, and that after 1911 there had been contradictory recitals in the documents. Broadly speaking whenever Venkayya executed a document he described himself as the son of Chimpirayya, and whenever third parties executed documents, he was described as the adopted son of Pitchayya. In this state of evidence it is not possible to say that there had been a consistent pattern of conduct from which a Court should draw the inference that the adoption must have taken place.
3. In the plaint neither the details of the partition nor the date of partition are given. The partition is alleged to have taken place in or about the year 1895; but no partition deed was executed to evidence the same. The burden is certainly on the appellant who sets up partition to prove the said fact. Even the documentary evidence filed in the case
4. does not help the appellant. The family property is situate in three villages, Paruchur, Upputur and Podapadu. If there was a partition inter se between the 4 -brothers, in the ryotwari settlement effected in 1906 the names of the brothers should have been entered separately in the revenue accounts but the relevant register pertaining to that settlement has not been filed.
5. This Court further relied on the case of **Bhagwati Prasad Sah v. Dulhin Rameshwari Juer {[1951] S. C. R. 603, 607}** where it was held that The general principle undoubtedly is that:
    a. *A Hindu family is presumed to be joint unless the contrary is proved, but where it is admitted that one of the coparceners did separate himself from the other members of the joint family and had his share in the joint property partitioned off for him, there is no presumption that the rest of the coparceners continued to be joint.*
6. Whether there is a partition in a Hindu joint family is, therefore, a question of fact; notwithstanding the fact that one or more of the members of the joint family were separated from the rest, the plaintiff who seeks to get a specified extent of land on the ground that it fell to the share of the testator has to prove that the said extent of land fell to his share; but when evidence has been adduced on both sides, the burden of proof ceases to have any practical importance. On the

evidence adduced in this case, both the Courts below found that there was no partition between Chimpirayya and Pitchayya as alleged by the appellant. The finding is one of fact.

7. Considering the third issue, the Courts evolved the doctrine by a pragmatic approach to the problems that arose from time to time. The evolution of the doctrine can be studied in two parts, namely,

    a. *the declaration of the intention, and*
    b. *the communication of it to others affected thereby.*

    The law is well settled, namely, that a severance in estate is a matter of individual discretion and that to bring about that state there should be an unambiguous declaration to that effect are propositions laid down by the Hindu law texts and sanctioned by authoritative decisions of Courts.
8. One cannot clearly declare or manifest his mental state in a vacuum. To declare is to make known, to assert to others. "Others" must necessarily be those affected by the said declaration. Therefore a member of a joint Hindu family seeking to separate himself from others will have to make known his intention to the other members of the family from whom he seeks to separate. The process of manifestation may vary with circumstances. The process of manifestation may vary with circumstances. This idea was expressed by learned judges by adopting different terminology, but they presumably found it as implicit in the concept of declaration.
9. Relying on the cases of **Soundarajan v. Arunachalam Chetty (1915) I.L.R. 39 Mad. 159 (P.C.)** and **Suraj Narain v. Iqbal (1912) I.L.R. 35 All. 80 (P.C.)** it was held that the expression "clearly expressed" meant "clearly expressed to the definite knowledge of the other coparceners." In **Balkrishna v. Ram Krishna (1931) I.L.R. 33 All. 300 (P.C),** took it as settled law that a separation may be effected by clear and unequivocal declaration on the part of one member of a joint Hindu family to his coparceners of his desire to separate himself from the joint family.
10. It is, therefore, clear that Hindu Law texts suggested and Courts evolved, by a process of reasoning as well as by a pragmatic approach, that such a declaration to be effective should reach the person or persons affected by one process or other appropriate to a given situation.

- **<u>Decision Held:</u>**

Applying the said principles to the present case, it will have to be held that on the death of Chimpirayya his interest devolved on Subbarao and, therefore, his will, even if it could be relied upon for ascertaining his intention to separate from the family, could not convey his interest in the

family property, as it has not been established that Subbarao or his guardian had knowledge of the contents of the said will before Chimpirayya died. In the result, the appeal fails and is dismissed with costs. Appeal dismissed.