
(1933) 08 MAD CK 0001
In the Madras High Court

A.M. Ramasami Chettiar

APPELLANT

Vs

Rengan Chettiar and Others

RESPONDENT

Date of Decision : 02-08-1933

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1(1)

Citation : (1933) 38 LW 666 : (1933) 65 MLJ 693

Hon'ble Judges : Curgenven, J

Bench : Division Bench

Judgement

Curgenven, J.—The 1st plaintiff is the Zamindar of Naduvasal. He succeeded his father, who died on the 18th August, 1923. On the 22nd

November, 1920, the father and son joined in executing a sale deed of the suit property for a sum of Rs. 30,000. After the 1st plaintiff had

succeeded to the estate, on the 14th August, 1926, he mortgaged the same property to the 2nd plaintiff. Both plaintiffs then brought the present

suit for a declaration that the sale deed of the 22nd November, 1920, was invalid and inoperative beyond the father's lifetime, under the terms of

the Impartible Estates Act. The defendants, who were the vendees, filed their written statements and the suit was posted for settlement of issues

when the 1st plaintiff applied to withdraw from the suit. This was objected to by the 2nd plaintiff, the mortgagee, but was eventually allowed. We

have been unable to find any order upon the application to withdraw itself, but the result is so stated in the learned District Judge's judgment.

Having thus allowed the 1st plaintiff to withdraw, the question was considered whether the 2nd plaintiff was entitled, by himself, to continue the suit

and was answered in the negative. This latter question will only arise if we confirm the order allowing the 1st plaintiff to withdraw.

2. Under Sub-rule (1) of Rule 1 of Order 23, Civil Procedure Code, "the plaintiff" may, at any time after the institution of the suit, withdraw it as against all or any of the defendants; Sub-rule (2) enables the Court to permit the plaintiff to withdraw from a suit with liberty to institute a fresh suit; and Sub-rule (3) relates to withdrawal without such permission. Sub-rule (4) runs as follows:

Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to withdraw without the consent "of the others.

3. The use of the word "rule" supports the view that this qualification applies not only to Sub-rules (2) and (3) but also to Sub-rule (1). On the other hand, it has been pointed out that under Sub-rule, (1) no permission of the Court is necessary, so that Sub-rule (4), which contemplates an

operation requiring such permission, is not suitably worded, to apply to a withdrawal under Sub-rule (1). There is some authority for the view that

sub-rule (4) does not apply to Sub-rule (1). It was so held in *Mohamaya Chowdkrtin v. Durga Churn Saha* (1981) 9 C.L.R. 332 under the

corresponding provision (Section 373) of the Civil Procedure Code, 1877. That was a case of two co-plaintiffs and it was held that one could

withdraw without the consent of the other under this provision of the Code. The matter came up in relation to an appeal in *Nilappagouda*

Goudappgouda Vs. Basangouda Sangangowda, , where a similar view was taken by Shah, J. Fawcett, J, while agreeing that in that particular case

one of the appellants might be permitted to withdraw, and being inclined to accept the construction put upon the rule, reserved his opinion

whether apart from the terms of the rule the Court had not power to control a co-plaintiff who desires to withdraw from a suit, if such withdrawal

would operate to the prejudice of his co-plaintiffs. He referred to an English case, *Mathews In re, Oates v. Mooneye* (1905) 2 Ch. 460 in which it

was held that one of several co-plaintiffs has no absolute right to withdraw from an action and have his name struck out. The reason of course is

that if one person engages with another or others to institute a suit, he ought not to be allowed to renege if such action will be to the detriment of his

co-plaintiffs in the conduct of the proceedings. This, we think, is a perfectly valid principle and it finds support in the terms of Sub-rule (1) of Order

23, Rule 1, which says " the plaintiff " may withdraw. Where there are more plaintiffs than one, the expression " the plaintiff " must be read as all

the plaintiffs collectively, and not so as to include one only amongst several plaintiffs. This principle has been recognised and acted upon in two

cases cited before us, (Upputuri) Punnayya and Another Vs. (Polavarapur) Lingayya and Others, . Irrespective therefore of the question whether

Sub-rule (4) governs Sub-rule (1) we think that the Court can refuse to allow one of several plaintiffs to withdraw if such a course is not consented

to by the remaining plaintiff or plaintiffs and would be prejudicial to his or their interests. In the present case the 1st plaintiff, we think, having given

the 2nd plaintiff a mortgage, presumably on the understanding that the sale was not binding after the father's death, ought not to be allowed to

abandon a suit intended to secure a declaration to that effect. We think accordingly that the withdrawal petition, I.A. No. 243 of 1926, should not

have been allowed and we dismiss it. We further set aside the judgment and decree in O.S. No. 9 of 1926 and direct the Lower Court to restore

the suit to file and proceed with it according to law. The respondents will pay the appellant's costs of the appeal.

4. The appellant will be entitled to a refund of the Court-fee paid upon the appeal memo u/s 13 of the Court-Fees Act.