

(1934) 01 MAD CK 0012
In the Madras High Court

Damaraju Sivaramamurthi

APPELLANT

Vs

Atyam Venkayya (deceased) and Others

RESPONDENT

Date of Decision : 16-01-1934

Acts Referred:

Citation : AIR 1934 Mad 364 : (1934) ILR (Mad) 667 : (1934) 39 LW 498 :
(1934) 66 MLJ 561

Judgement

1. This is an appeal by the 2nd Defendant against the revised judgment by the learned Sub-Judge after remand in O.S. No. 117 of 1922. The only

point argued relates to the decree passed against the 2nd Defendant for the past mesne profits. The 2nd Defendant is the son of the 1st Defendant

who is now dead and Defendants 3 and 4 are his uncles, being the-brothers of the 1st Defendant. The Plaintiff has become the purchaser of the

one-third undivided share belonging to the 1st Defendant in the suit items.

2. The Appellant says that no decree should have been passed against him as he and his father were not in possession of the family properties and

as the profits of the properties were all along being enjoyed by Defendants 3 and

4. The learned Judge did not accept this view of the case.

Defendants 3 and 4 say that the profits of the properties were being enjoyed in shares by the Defendants. The leases of the properties were

sometimes given by the 3rd Defendant and sometimes by the 4th but the profits were enjoyed by all the brothers each taking his share. How they

were enjoying the properties is detailed in the evidence of the 3rd Defendant. The written statement of one of the tenants (see the written statement

of 11th Defendant) also supports this version. Mr. Somasundaram emphasises that part of the Plaintiff's evidence wherein he says that ""the profits

are being enjoyed by Defendants 3 and 4". This no doubt at first sight would support the case of the 2nd Defendant, but we have to take this

evidence along with the evidence of the 3rd and the other Defendants, and we have also to remember that the Plaintiff is a stranger and is hardly

likely to know the details about the actual enjoyment of the produce. The evidence of the Defendants 3 and 4 show that they collected the produce

with respect to certain lands and that the brothers divided it in shares. Read in this light the Plaintiff's evidence does not hurt his case. It is also

unlikely that the 1st and 2nd Defendants would have given up their shares of the produce of the family lands. The learned Judge has accepted the

evidence of D.W. 3 and D.W. 4. We see no reason to reject their evidence on this question.

3. Another point argued by the appellant is that since the family of Defendants 1 to 4 is admittedly undivided the purchaser of an undivided share of

its properties is not entitled to claim past mesne profits. Reliance in support of this proposition is placed on *Maharaja of Bobbili v.*

Venkataramanjulu Naidu ILR (1914) Mad. 265 : 27 M.L.J. 409 but that case is distinguishable, because in this case the evidence shows that

though the properties are not divided by metes and bounds, the brothers were enjoying them in definite shares and were living also separately,. A

division in status is thus established between the members. In such a case a decree for mesne profits may be given to the purchaser of the

undivided share-see *Palaniakkal v. Ranianna Koundan* (1910) 7 I.C. 695 and also the observations on the point in *Sheodan Kurmi v. Balkaran*

Kurmi I.L.R.(1920) All. 193

4. We overrule both the points urged by the Appellant's learned Counsel and dismiss this appeal with costs.