
(1924) 08 MAD CK 0035
In the Madras High Court

Gooty Agraharam Subramanian and Another APPELLANT
Vs
Agraharam Ramachandra Rao RESPONDENT

Date of Decision : 06-08-1924

Acts Referred:

Citation : 85 Ind. Cas. 503 : (1924) 47 MLJ 908

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The only point argued in this second appeal is that the suit is not maintainable as it does not embrace all the properties

belonging to the plaintiff and defendants Nos. 1 and 2.

2. The plaintiff admits in his evidence that there are several lands belonging to him and the defendants which are in the possession of tenants, that he

himself had leased the lands before the date of suit and that the income from the lands was payable to himself as well as to defendants Nos. 1 and

2.

3. The District Munsif held that the suit was maintainable and the Subordinate Judge dismissed the appeal of the defendants on the ground that the

suit was maintainable. We are clearly of opinion that this is not a case in which there was any inconvenience or difficulty in the way of including the

other lands belonging to the plaintiff and the defendants among the properties to be divided in the suit. If some property belonging to the plaintiff

and the defendants was in the hands of a third party claiming adversely to them, or if some property was alienated by one of the co-sharers and if

there was some difficulty in including such alienee in the suit, then it may be that the Court would not be inclined to hold that such properties should

be brought into the suit. But in this case no such difficulty is alleged to exist. On the other hand the only allegation is that the other properties are in

the possession of the tenants of the plaintiff. It was held in *Rajendra v. Brojendra* (1932) CriLJ 191 that a suit for partial partition would not

ordinarily lie. In *Pakkiri Kanni v. Manjoor Saheb* ILR (1923) M 844 a Bench of this Court held that in certain cases partial partition may be

allowed but there must be circumstances which militate against the division of all the family properties and which would be a sufficient reason for

the Court to hold that the suit for partial partition should be allowed. But in this case no such circumstances have been brought to our notice. There

is no reason why the plaintiff should not have included all the properties belonging to himself and the defendants in his prayer for partition.

4. In the circumstances we allow the appeal of the defendants; but at the same time we do not think that the suit of the plaintiff should be dismissed

on this technical ground. We allow him an opportunity to amend his plaint within two months from today. He will pay the costs of the defendants

throughout; and the District Munsif will allow the amendment only after he pays the amount of costs to defendants 1 and 2, If he does not amend

the plaint the suit will stand dismissed with costs throughout.