

(1947) 02 MAD CK 0026
In the Madras High Court

Kandukuri Papamma

APPELLANT

Vs

Kandukuri Narayana and Others

RESPONDENT

Date of Decision : 26-02-1947

Acts Referred:

Citation : AIR 1948 Mad 54 : (1947) 60 LW 241 : (1947) 1 MLJ 274

Hon'ble Judges : Chandrasekhara Aiyar, J

Bench : Division Bench

Judgement

Chandrasekhara Aiyar, J.—The dispute in this second appeal relates to a plot which the plaintiff alleges fell to her share at a partition but which the defendants say has been in their possession having fallen to their share at a partition even during the lifetime of their father. The plaintiff had to file a suit (O.S. No. 99 of 1940) for an injunction in respect of this plot some years before against the first defendant and the representatives of two other branches of the original family of four and in this suit she succeeded on the strength of a finding that the plot had fallen to her share. One of the questions raised is whether this decree is res judicata.

2. The first Court held that the unregistered agreements, Exs. P and P-1, which refer to the allotment of the plot to the plaintiff at a partition, were admissible in evidence and proved the plaintiff's title. It held, however, that the decree in O.S. No. 99 of 1940 did not bind defendants 2 and 3 who were not parties to the suit. On appeal the District Judge did not deal with the question of res judicata at all. As regards the admissibility of Exs. P and P-1, he took the view that they were inadmissible in evidence. Hence he dismissed the plaintiff's suit.

3. It is somewhat doubtful whether Exs. P and P-1 record a past transaction of partition or evidence a contemporaneous arrangement of division. Further, even if as a matter of fact the partition took place previously, as its terms were reduced to the form of a document and that document is inadmissible in evidence for want of registration, oral evidence is not permissible to be adduced. This is the effect of the decision reported in Subbu Naidu and Others Vs.

4. But on the question of res judicata which is raised for the first time now at the hearing of this second appeal and which does not appear to have been taken even before the lower Court, it seems to me that the defendants will find difficulty in furnishing an answer. The judgment in the prior suit is before us and the question being one of law can be taken at any stage. It is not necessary that a suit should be filed against a person as manager of a Hindu family describing him as such for the proceedings to be binding on the other members. It is enough if it could be gathered that he was sued in such capacity. O.S. No. 99 of 1940 was filed against three persons who were apparently the heads of their respective families. Defendants 2 and 3 are the brothers of first defendant. As is pointed out by the District Munsiff, for the purpose of getting rid of the effect of the decree and of the partition a false case of illatom of D-1 has been set up to make it appear that the first defendant was not the manager of the family, he having gone in adoption to another family. Defendants 2 and 3 were not parties to Exs. P and P-1. The first defendant represented them in the agreements. If he was not the managing member of the family, then the deeds are not operative against defendants 2 and 3 and do not bind them and if such were the case there is no difficulty in the plaintiff proving the partition aliunde inasmuch as there is no written deed evidencing the partition so far as defendants 2 and 3 are concerned.

5. Merely because defendants 2 and 3 were not parties to this suit by name it does not follow that they are not bound by the decree. If we are able to find that the suit was directed against the first defendant as manager of the family they are bound. Such was, in my opinion, the nature of the suit. Finding issue (2) in favour of the plaintiff, and against the defendants, I set aside the decree of the lower Court and restore that of the District Munsiff. As the plaintiff is succeeding on a point not raised by her in the memorandum of grounds of second appeal, she will have no costs. No leave.