

(1912) 12 MAD CK 0020
In the Madras High Court

Kesavasami Aiyar

APPELLANT

Vs

A.L.R.A.R.R.M. Narayana Chetty and Another

RESPONDENT

Date of Decision : 01-12-1912

Acts Referred:

Citation : (1913) 24 MLJ 228

Hon'ble Judges : Sankaran Nair, J;Sadasiva Aiyar, J

Bench : Full Bench

Judgement

Sankaran Nair, J.—Kesava Aiyar was the cowledar of the plaint village under the Rajah of Ramnad. He bequeathed one-eighth of his

interest in the village to the plaintiffs and seven-eighths to his son, Narasimier. The plaintiffs, however, never got possession of his shares of the

property. Narasimier, who remained in possession, was treated by the landlord as sole cowledar, paid the Poruppu, payable on the whole land,

took receipts in his sole name, issued pattahs to the cultivating tenants, and received muchilikas from them. He paid the plaintiff his share of the

income. The plaintiff did not pay the landlord the rent payable by him on his share. It is also found that the Zamindar or his representatives in title

had no knowledge of the plaintiff's interest in the land. Nara-simmier made default in payment of rent. Proceedings were taken against him under

Act VIII of 1865 and the land was sold.

2. The plaintiff now sues for a declaration that the wale does not affect his interest in the land and seeks for a partition and delivery of his share. His

claim was disallowed by both the lower Courts.

3. The interests of the original cowledar having vested in the plaintiff and Narasimmier, the plaintiff's interest in the property cannot pass by a sale

unless he was made a party to the proceedings which led up to the sale by notice having been served upon him. It has been held, by this Court that

where a tenant has assigned his interest, the assignee is not bound by proceedings taken against the original tenant, even if the assignee failed to

give notice of his purchase and the Zemindar had no knowledge of the same. The case of a devolution of interest is perhaps stronger, as the

landlord in such a case has to find out the heir or representative. We are, therefore, of opinion that the sale is not binding on the plaintiffs.

4. The next question is one of estoppel. The facts found, set forth above show that the plaintiff has not made any representation by words or

conduct to lead the Zemindar to believe that Narasimmier alone was his tenant and that the plaintiff had no interest in the property. His omission to

give notice to the Zemindar does not estop him as there was no obligation on his part to do so. We are, therefore, of opinion that there was no

estoppel.

5. It was then argued by the respondents' pleader that the suit is barred by limitation. No notice was given to the plaintiffs. He will not be bound by

the sale if he did not set it aside, as Narasimmier did not in any way, represent him. No authority is cited in, support of this contention. The decision

in *Suryanna v. Durgi* ILR (1883) M. 258 which supports the defendants' contention, has been overruled in *Kadir Hussain v. Hussain Sahib* ILR

(1895) M. 118. We disallow this plea. We, therefore, reverse the decrees of the Lower Court and pass a preliminary decree for partition and

direct the District Munsiff to restore the suit to his file and proceed in accordance with law to pass the final decree. The appellant is entitled to "his

costs in this and the lower appellate Court. The costs in the first Court will be dealt with by the final decree.

Sadasiva Aiyar, J.

6. I entirely agree in the judgment pronounced just now by my learned brother dealing with the question of estoppel and limitation relied on by the

respondents in support of the Lower Court's decision.

7. I wish only to deal with two cases quoted by the learned Vakil (Mr. S, Sreenivasa Aiyangar) for the respondents on the question of estoppel.

One case is reported in *Nitay Behari Saha Paramanik v. Hari Gobinda Saha* ILR (1899) C. 677 et seq. There Hill and Rampini, JJ., differed, Hill,

J., holding that the Court sale in execution of the decree obtained against one joint owner of a tenure passed the rights of all the owners because he

was the only registered owner, while Rampini, J. held the contrary. The third Judge, Banerjee, J., agreed with Hill, J., and his reasons are those

given at page 699- The reason for the decision is that, as the law required tenants to register their names in* the landlord's office unregistered co-

owners of a tenure by their omitting to have their names registered, must be taken to have acquiesced in the registered tenant representing them in

their dealings with the landlord.

8. No law required the plaintiffs in this case to have the ownership of his one-eighth share registered in the landlord's office, nor was

Narasimmier's name registered as sole owner in the landlord's office in accordance with any statutory provision. That case, therefore, cannot help

the defendants (respondents) in this case.

9. The other case, Zemindar of Ettiyapuram v. Sankarappa Reddiar ILR (1903) M. 483 was one in which the real owner directly received

pattahs, from the Zemindar, in which his vendor's name was mentioned as the tenant and thus actively represented this, his vendor might be treated

as tenant for all purposes relating to the recovery of rent. This case also therefore does not help the respondents in this case.