

(1961) 04 MAD CK 0027
In the Madras High Court

M. Abdul Razack

APPELLANT

Vs

S. Mohammad Shah

RESPONDENT

Date of Decision : 21-04-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (1962) 1 MLJ 380

Hon'ble Judges : Ramachandra Iyer, J; Ramachandra Aiyar, J

Bench : Division Bench

Judgement

Ramachandra Iyer, J.—The order of the lower Court impleading the husband of the second defendant as a party to the partition suit cannot be supported. The claim of the third party is that he was entitled to the suit property in his own right. Admittedly, he is not one of the sharers to the estate of Madaras a Sahib. It is well settled that, in substance, a partition suit between Mohamadan co-sharers is in the nature of an administration suit. The question of the title of the third parties to the estates will not always be a proper one for adjudication in a suit for administration. Mr. K. Hariharan contends that the plea that the respondent was entitled to the property had already been taken by defendants 1 and 2 in the case, and that, if he is impleaded as a party, multiplicity of suits will be avoided. These are not the only considerations that should guide a Court in impleading a party to the suit. The power to implead a party to a suit is governed by Order 1, Rule 10, Civil Procedure Code. A party can be impleaded only when he is a necessary or a proper party. It cannot be stated that a person claiming an adverse title to the estate of the deceased would be either a necessary or a proper party in a suit for administration of the estate. It may be that in certain cases the plaintiff can implead such a person claiming adverse title in a partition or even administration suit; but where the plaintiff does not want him to be impleaded, it will only be embarrassing the trial of the suit if every adverse claimant to the estate were to be allowed to come in as defendant to get his claim adjudicated. A third party can institute his own suit for the protection of such right as he may have in the property.

2. The Civil Revision Petition is allowed. There will be no order as to costs.