

(1923) 08 MAD CK 0082
In the Madras High Court

Mela Vittil Kunhan Menon

APPELLANT

Vs

Mele Vittil Kannan Menon and Others

RESPONDENT

Date of Decision : 29-08-1923

Acts Referred:

Citation : 79 Ind. Cas. 561

Hon'ble Judges : Spencer, J;Devadoss, J

Bench : Division Bench

Judgement

1. The parties are Nair subjects of the Cochin State. The suit has been brought in a British Court to obtain partition of properties in British India. The Subordinate Judge of Palghat has appointed a Receiver to manage these properties pendente lite.

2. When a member of a Mitakshara joint Hindu family sues for partition, his right to become divided is self-evident and it may be taken for granted that, unless he makes default he will get a decree, the form that the partition will take being alone left in issue. There is no such certainty about the present case. The theory that the plaintiff can take his newly acquired right to partition under the Cochin Regulation, carry it with him as his personal law into a foreign country and impress Immovable property lying in that country, where partition among Nairs is not the law of the land, with the character of partiality is a novel one and will need to be established at the trial. Meanwhile, the plaintiff has not a prima facie right to ask for a Receiver. Moreover, the Judge has not found that there is any danger of waste. He says, that "no harm will be done" by the appointment of a Receiver, and that if the plaintiff has first to prove his right to partition it will be "too late" to appoint a Receiver. This is not enough. There must be some substantial ground for interfering with existing rights of possession (Vide Sivagnanathammal v. Arunachelam Pillai 11 Ind. Cas. 870 : 10 M.L.T. 490 : (1911) 2 M.W.N. 75 : 21 M.L.J. 821. "We, therefore, set aside the lower Court's order with costs of this appeal.