

(1923) 08 MAD CK 0021
In the Madras High Court

Mele Vittil Kunhan Menon

APPELLANT

Vs

Mele Vittil Kannan Menon and Others

RESPONDENT

Date of Decision : 29-08-1923

Acts Referred:

Citation : AIR 1924 Mad 482 : (1924) 46 MLJ 133

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 portability 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 Sivagnathammal v. Arunachalam Pillai 10 M.L.T. 490). We

therefore set aside the lower Court's order with costs of this appeal.