

(1948) 08 MAD CK 0059
In the Madras High Court

Nandula Bhavani Sankaram

APPELLANT

Vs

Saladi Mangamma and Others

RESPONDENT

Date of Decision : 13-08-1948

Acts Referred:

Citation : (1948) 61 LW 677 : (1948) 2 MLJ 412

Hon'ble Judges : Mack, J

Bench : Division Bench

Judgement

Mack, J.—This petition raises a question of jurisdiction and court-fee. The petitioner is the plaintiff; he and the twelfth defendant were brothers. One Nagabhushanam, the deceased father of the first and second defendants, made a gift of some lands in the plaintiff A and B schedules on 9th March, 1935, to the twelfth defendant. In a partition between the plaintiff and the twelfth defendant the A and B scheduled lands were allotted to the share of the plaintiff. These lands admittedly formed part of Nagabhushanam's joint family property and there were, according to the plaintiff, recitals in the gift deed that Nagabhushanam would make his sons agree to the gift or that he would make other arrangements to compensate them. The ninth defendant was impleaded as a purchaser from the Official Receiver of the B schedule property after adjudication of the second defendant as an insolvent, under a sale deed under cover of which he is said to have entered into possession. The plaintiff schedule C comprises the joint family property of Nagabhushanam's family including the A and B schedule lands. The plaintiff sued to enforce his rights to A and B schedule property by a plaint framed as for a general partition with the following main prayer: for

dividing the plaintiff C schedule properties into three equal shares, putting the properties described in schedules A and B in one share in the said partition, allotting the said share to the one-third share which has to fall to late Nagabhushanam Garu's representatives, allotting the properties described in schedules A and B to the plaintiff, ejecting defendants 1 to 10 from the B schedule property and delivering possession of the same to the plaintiff.

2. Objection was taken by the defendants that C schedule in the plaint did not include all the joint family property and on this objection the plaintiff applied for inclusion of further joint family property in D schedule and the addition of defendants 13 to 15 as parties. The plaintiff adopted this course in order to avoid the contention that the suit was bad as one for partial partition. The learned District Munsiff disallowed the amendment on the ground, as I understand his order, that if he allowed it, it would take the suit outside his pecuniary jurisdiction. It is common ground before me that if the D schedule property comes into the suit, the one-third share of Nagabhushanam which the plaintiff seeks to partition would be in excess of the pecuniary jurisdiction of the District Munsiff. It is settled Law as both sides admit that for purposes of jurisdiction in a joint family partition suit, it is the plaintiff's interest in the property that must be valued. This has been recently confirmed in *Murkothkandiyil Muiyyarikkandi Kalander and Others Vs. Thattantavita Vatakkayil Muiyyanikandi Kunhipakki*, a Bench decision of our High Court.

3. The learned advocate for the petitioner would seek to apply the principle laid down in that decision to this suit also and to argue on its basis that the value of the smaller share he claims should determine both court-fee and jurisdiction. There are manifest objections to the adoption of this course. In the first place, as the lower Court has rightly pointed out, the acceptance of it would enable every purchaser of a small share of the joint family property from a coparcener possessed of a very large estate to file a partition suit which would normally be filed in the District Court or Sub-Court in the Court having the lower jurisdiction. The suit is one essentially in the first instance for a partition of the share of Nagabhushanam out of which the plaintiff seeks for an equitable relief for the recovery of the lands gifted to his brother by Nagabhushanam and which were allotted to him at the family partition.

4. There is no Madras decision in point. The District Munsiff has rightly followed in the circumstances a decision of the Bombay High Court in *Mahadeo Gopal Pendse Vs. Hari Waman Bhate*, which is not regularly reported but is found in the All India Reports. It was held that in cases such as these for purposes of jurisdiction the suit must be valued as the value of the share of the alienor-coparcener in the entire joint properties. In the great majority of cases the value of the relief claimed by the plaintiff coincides with the relief he himself seeks. But in this exceptional type of cases the plaintiff has been asking in the first instance for a very wide relief out of which a far smaller relief should accrue to himself. In such a case jurisdiction must clearly be determined by the value of the greater relief for which the plaintiff asks. I have no hesitation in holding that the learned District Munsiff's finding as regards the valuation and court-fee in case he allowed the amendment sought by the petitioner is correct. The learned District Munsiff felt himself embarrassed in giving effect to his correct finding and in allowing the amendment on the ground that if he did so, he would be ousting his own jurisdiction. I think that he would have been in order in returning the plaint for re-presentation in the amended form to the higher Court having jurisdiction

including in it the D schedule lands and impleading the defendants 13 to 15. This course will now be adopted. I direct the parties to bear their own costs throughout.