
(1900) 11 MAD CK 0014
In the Madras High Court

Panga and Others

APPELLANT

Vs

Unnikutti and Others

RESPONDENT

Date of Decision : 06-11-1900

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : (1901) ILR (Mad) 275

Hon'ble Judges : Subrahmania Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. We agree with the District Judge that the suit is barred both as res judicata and by Section 42, Specific Relief Act. In the unreported decision of

the Court in Krishnan Nambiar v. Chathu Nambiar Appeal No. 135 of 1885 (unreported) it was held that "the value of a suit to have it declared

that certain persons are or are not members of a tarwad is the value of the share of the tarwad property which would be allotted to them if a

partition were made by common consent.

2. In this view the value of the plaintiffs' suit would be 39/38ths, i.e., two-thirds of Rs. 3,000 which is the value of the whole property. In other

words the value of the suit for purposes of jurisdiction is only Rs. 2,000, and the suit was therefore triable by a District Munsif Consequently the

decision in Original Suit No. 428 of 1894, Shernad District Munsif's Court, that there was a community of interest, is conclusive between the

parties in the present suit.

3. As regards Section 42, Specific Relief Act, we think that the plaintiffs, in addition to the declaration asked for, were in a position to ask for the

further relief of possession of the portion of the property which was in the

enjoyment of the defendants on a claim that they were members of the family. Not having done so, plaintiffs' suit for a bare declaration could not be sustained, with reference to Section 42, Specific Relief Act. In the result we dismiss this second appeal with costs of respondents Nos. 1 to 4.