

(1922) 12 MAD CK 0016
In the Madras High Court

Rajaratnam Ayyar alias Bapurajan

APPELLANT

Vs

Halasyasundaram Aiyar and Others

RESPONDENT

Date of Decision : 07-12-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Citation : AIR 1923 Mad 521 : (1923) 17 LW 329 : (1923) 44 MLJ 322

Hon'ble Judges : Oldfield, J

Bench : Division Bench

Judgement

Oldfield, J.—The order I am asked to revise is one made in a suit by the plaintiff, here petitioner, for the recovery of possession of

properties comprised in an estate, of which the last male owner was one Sundaram Aiyar. The plaintiff's father was, it is the plaintiff's case,

adopted by the 1st defendant, the widow of Sundaram Aiyar. The plaintiff sues on the ground that he has been unlawfully excluded from the plaintiff

properties by that widow on account of an invalid agreement entered into between her and the 2nd defendant. The lower Court's order is one

made on the petition of the present respondents alleging that they are the nearest reversioners to Sundaram Aiyar and asking that they may be

made defendants in the suit. There was in this petition an allegation of collusion between the plaintiff and the 1st defendant. But in its order making

the respondents parties the lower Court has not referred to any grounds for that allegation or recorded any finding in favour of it; and no stress has

been laid upon it in this Court.

2. The question then is whether the lower Court's order was one which it was competent to make under Order 1, Rule 10 Clause (2), Civil

Procedure Code; that is, whether the presence of the respondents before the Court was necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

3. It is clear that one question, and probably the most important question involved in the suit was whether the plaintiff's father's adoption to Sundaram Aiyar was true and valid.

4. That question arises now as between the plaintiff and the 1st defendant. It will in the natural course, if the plaintiff persists in his claim arise again

on the 1st defendant's death between him and the reversioners, whosoever at that time they may be. It is further the case that the adoption is

alleged as having taken place over 35 years back and that a complete trial is advisable in the interest of the perpetuation of testimony, if on no

other account. All convenience in the circumstances is in favour of the lower Court's order. Objection to it has accordingly been urged on strictly

legal grounds, mainly with reference to the interpretation, which has been placed on the words of the rule. The rule is in fact identical with the

English rule on the subject and reference has therefore been made to *Norris v. Beazley* ILR (1877) C.P.D. 80 and *Seeta-ramayya v. Ramappayya*

(1916) 5 L.W. 207 in which that decision was applied in this country. It does not however seem to me that these authorities are of much use in the

present case, because in them the question, in which the persons alleged to have been wrongly joined were interested in having a decision, was

distinctly outside the original scope of the proceedings. Here, as has been pointed out, the question which the present respondents are concerned

with is a question, which will have to be decided eventually even if no addition is made to the parties originally on the record.

5. It is then urged that the respondents, having failed to sue within six years from the date of the alleged adoption allowed by the Limitation Act,

have lost their right to an adjudication on the adoption until the succession opens in their favour or in favour of the reversioners at the time of the

death of the widow. It is not however clear that inability to sue independently debars them from the benefit of an adjudication in proceedings,

which have been otherwise legitimately instituted. On the other hand it is pointed out that the widow in such proceedings as these represents the

estate and that a decision against her will be binding on those eventually

entitled, in the absence of collusion on the part of the respondents. See

Risal Singh v. Balwant Singh I.L.R.(1919) All 593 and the cases collected in the judgment of Mookerjee, J. in Ganga Narain v. Indra Narain

(1916) 25 C.L.J. 391 . The argument is then that it would be strange if a person who, it cannot be disputed, would be represented by a party on

the record and bound by the decision against that party is to be debarred from himself appearing to protect his interests. The question thus raised

has not, so far as I have been shown been the subject of any direct decision, but that a party so affected would be entitled to be impleaded is

indicated by the language used in Nagendrachunder Ghose v. Sreemutty Kaminee Dossee (1967) 11 M.I.A. 241 , Veerabadra Aiyar v.

Marudaya Nachiar ILR (1909) M. 188 and the decision of Mookerjee, J. already referred to. Taking this view I hold that the lower-Court's

order was not made without jurisdiction. The revision petition therefore fails and is dismissed with costs of respondents 1 and 2. 3rd respondent,

widow, will pay her own costs.