

(1908) 01 MAD CK 0006
In the Madras High Court

Ramkrishna Aiyar and Others

APPELLANT

Vs

Krishna Aiyar and Others

RESPONDENT

Date of Decision : 07-01-1908

Acts Referred:

Citation : (1908) 18 MLJ 85

Judgement

1. This is an appeal from a decree of the District Judge, Trichinopoly. In the plaint the plaintiffs set out that melvaram rights in the suit village have been divided into 40 shares of which they have acquired of shares by purchase, while they are also usufructuary mortgagees of ten shares. They state further that in these circumstances they have had great difficulty in recovering their rents and that they have been led to sue for partition. They pray, therefore, for a declaration that they are entitled to the shares above mentioned and that land proportionate to such shares may be ascertained and set apart for them, and that they may be placed in exclusive possession thereof, that is to say, that melvaram rights in certain specified lands may be allotted to them in respect of their shares. So far, the plaint appears to be in order, whatever practical difficulties there may be in carrying out the partition prayed for. The plaintiffs, however, have joined not only their co-sharers in the melvaram rights, but also the ryots or kudivaramdars of the village as defendants. The latter, it is stated, have been joined not only in order that they may be bound by the decree effecting a partition between the melvaramdars, but also for the purpose of determining and defining a number of questions raised in the plaint as to the rights of the melvaramdars against the ryots or kudivaramdars. Several of the defendants whilst admitting the plaintiffs' rights to the partition

prayed for have questioned their right to raise these questions in the present suit, and the point is covered by the latter part of the 1st issue which is

in the following terms: ""Can the rights and liabilities of the tenants be decided in this suit?"" The District Judge would appear to have overlooked this

issue as it is not dealt with in his judgment, and he has proceeded without considering it, to determine the various issues relating to the disputes

between the melvaramdars and the ryots. It might be, no doubt, convenient for the purposes of carrying out the partition to ascertain the exact

rights of the melvaramdars as against the ryots, just as in a suit for the partition of joint family property or in an administration suit it might be

convenient to ascertain the precise amount of debts due to the estate, but it has never been suggested that in the latter cases all the debtors to the

estate could be made parties and the amount of their debts recovered or established by a binding declaration. Such a joinder of different causes of

action would clearly be inadmissible, and we think the present plaint appears to be open to the same objection. It certainly cannot be said to be

necessary for the purpose of effecting the partition and giving the plaintiffs the relief prayed for to determine as between the melvaramdars and the

ryots and the terms on which each of the ryots holds his lands under the melvaramdars. As it is not absolutely necessary for the purpose of

effecting the partition, we are of opinion that a course which involves the joinder of so many causes of action between different parties cannot be

supported. The practical objection to such a course appears from the evidence in the present case which has been fully discussed before us, which

it would not be safe to act on generally, while it would be very difficult to apply it to the case of every individual ryot. The decree in *Ramanuja v.*

Virrappa ILR (1882) M. 90 as we understand it, is not inconsistent with this view. It is, however, the well established practice in a suit for partition

to add persons claiming to be in possession as alienees of the property sought to be partitioned, and this practice is certainly justified by

convenience. A question of this sort is raised in the 14th issue as to a claim of the ryots to the melvaram rights of certain lands in the village. We

think the question was rightly gone into by the District Judge but we are unable to agree with the conclusion at which he has arrived. It is in

evidence that many years ago the ryots refused to pay rent for the lands on the ground that the melvaramdars had taken possession of certain other

lands of exactly the same extent in the village which are still in their possession. The melvaramdars appear not to have demanded any rent subsequently and to have relinquished the claim to the rent in consideration of their being allowed to continue in possession of the other lands. On the whole we think the plaintiffs have failed to prove the melvaram rights they claim in these lands and they must accordingly be excluded from the decree. The decree must also be modified by striking out the words from ""this Court doth declare (1) that on all crops"" etc., down to ""entitled to a share in the crop."" All these declarations must be omitted for the reasons already given. It follows that the words ""with reference to their rights as above declared"" must also be struck out, Under the circumstances we think that in the lower Court each party should bear his own costs and in appeal the appellants will get their costs from the respondents who are plaintiffs.