

(1923) 02 MAD CK 0024
In the Madras High Court

Ratnachalam Aiyar

APPELLANT

Vs

Sivachidambaram Pillai and Others

RESPONDENT

Date of Decision : 19-02-1923

Acts Referred:

Citation : 76 Ind. Cas. 207 : (1923) 18 LW 198 : (1923) 45 MLJ 703

Hon'ble Judges : Odgers, J

Bench : Division Bench

Judgement

Odgers, J.—These are revision petitions against the orders of the District Munsif of Kulittalai. The first is against an order of his striking out

defendants 43 to 99 in O.S. No. 596 of 1920 on his file and the second against his dismissal of an application by plaintiffs to join these same

defendants on the ground that some of them are setting up permanent rights of occupancy on the lands in their possession and which are in question

in the suit.

2. A preliminary objection is taken that no revision petition is competent as an appeal lies and this objection must be disposed of first of all. It will

be necessary to examine the plaint in some detail and to see exactly what is claimed in the suit. The plaintiff alleges that the lands in question are

samudayam lands in K.T. Vyganallur village consisting of 104 1/4 pangus. These lands are the property of the defendants (1 to 42) in their

respective shares. The five heads of chethis (including 2nd plaintiff) are enjoying the said lands on their own behalf and that of the other owners.

Two previous partition suits were filed viz., O.S. No. 202 of 1910 by 1st defendant and O.S. No. 74 of 1891 by 2nd defendant by which 1st

plaintiff has acquired 5 15/16 pangus and 2nd plaintiff 6 pangus. 1st defendant is

entitled to 43/16 pangus and 2nd defendant to 16 3/16 pangus, the remainder (71 15/16) are the property of defendants 3 to 42. As joint enjoyment is impossible owing to disputes, the plaintiffs ask partition of the 11 15/16 pangus belongiag to themselves. Defendants 43 to 99 who are tenants at will with the consent of the heads of the chethis are joined as parties, in order that possession may be given to plaintiffs. The material prayers are that the 11 15/16 pangus be partitioned out to plaintiffs, given possession of and that future profits from date of plaint to date of actual partition at the rate of Rs. 350 a year be given by the defendants.

Mr. Vaidynatha Aiyar who takes that preliminary objection urges that the District Munsif by his order or orders has refused to plaintiffs the relief to possession and to have their title to the reversion investigated. The rights of the plaintiffs to bring the suit as against the tenants is determined. He relies on the rulings in Rama Rao v. The Raja of Pittpur 36 M.L.J. 169 and Ayya Mudali Velan Vs. Veerayee, as governing the question. In the former case it was held that the substance of the order striking out 1st defendant was to determine the rights of plaintiff to bring a suit of that nature; it was for a declaration that 1st defendant be not entitled to claim that he was a reversioner to the Raja of Pittapur and secondly for setting aside the adoption of 2nd defendant by the 4th defendant and that therefore the order was a decree as a substantial right had been adjudicated upon and a substantial relief had been deleted. The test suggested was " does the removal of parties leave the suit intact? In Ayya Mudali Velan Vs. Veerayee, a refusal to implead a person as legal representative of deceased plaintiff on the ground that the cause of action did not survive is a decree as it finally deprives the person refused of all his rights in the suit and has the effect of putting an end to the litigation altogether. The only material allusion to tenants in the plaint is in para 10 where it says they (defendants 43 to 99) are tenants at will and are joined for the purpose of completing plaintiff's possession of their shares when partitioned. No relief is claimed against them. Prayer (c) future profits is not an appropriate relief against tenants but only against the co-sharers (defendants 1 to 42) with the plaintiffs. The first prayer for partition makes no specific mention of the tenants and I am unable to find that any relief is claimed as against them. They only sought to be impleaded for convenience. These facts

seem to Co distinguish the present case from both the cases quoted above. No substantial right has been adjusted upon here find the effect of

deleting the tenant defendants has certainly not the effect of putting an end to the litigation altogether. Moreover the case Shanmuka Nadan v.

Arunachalam Chetty (1921) ILR 45 : 42 M.L.J. 97 seems to me a direct authority in support of this view. The refusal to join the holders of

disputed decrees in a family partition suit was held not to be the subject of appeal, even though reliefs were alleged to be claimed against those

defendants, on the ground that the Lower Court's order was not a conclusive determination of any of the matters in controversy. I therefore hold

that as no appeal is expressly provided by the code and as the matter does not fall within the principle of the cases cited by Mr. Vaidynatha Aiyar

there is no appeal. This disposes of the preliminary point. The further question arises as to whether assuming that revision petitions lie, I should

interfere. For the plaintiffs several authorities are relied on. Shanmuka Nadan v. Arunachalam Chetty (1921) ILR 45 M. 194 : 42 M.L.J. 97 is

authority for interference where the lower Court has entirely misunderstood the nature of the judicial discretion it was called upon to exercise.

P.S.A.R.A.R. Arunachellam Chettiar Vs. Arunachellam Chettiar minor by guardian Visalakshi Achi, is authority for interference where lower Court

has wrongly held a suit bad for misjoinder of causes of action and has directed plaintiff to elect which he would proceed with. In Ramakrishna

Aiyar v. Krishna Aiyar (1907) 18 M.L.J. 85 it was held that a suit was bad for misjoinder which raised questions in a partition suit as to the rights

of the melvaramdars against the kudivaramdars, as it was not absolutely necessary for the purpose of effecting the partitions. This appears to me to

be practically on all fours with the present case.

3. In Samintha Pillai v. Subha Reddiar (1876) ILR 1 M. 333 there was a suit for partition of joint inam lands and ejectment against a number of

cultivating ryots. It was held that the suit was bad for multifariousness and the proper remedy of the the plaintiffs was to proceed against each ryot

separately. In Ramanujo v. Firappa ILR (1882) M. 90 the suit as Originally framed was one between co-mirasadars as indeed the present one is

also. The lower Court however wandered into the intricate issue of determining the extent of subordinate existing interests and the Lower Appellate

Court held the suit unsustainable. The High Court held that the suit could be maintained and the plaintiff must implead all ryots whose right he

questioned in order that their interests may be ascertained. This was the case of an inam village. The judgment of the High Court is extremely brief

and no reasons are given. The Court in Ramakrishna Aiyar v. Krishna Aiyar (1907) 18 M.L.J. 85 considered Ramanuja v. Virappa I.L.R.(1882)

ILR 6 M. 90 and came to the conclusion that the decree there was not inconsistent with the view taken in the former case. As pointed out at page

87. "The practical objection to such a course (i.e., joining the kudivaramdars as defendants) appears from the evidence in the present case 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." This seems to lend

support to Mr. Vaidyanatha Aiyar's objection that if defendants 43 to 99 are joined here there must be an investigation into every square foot of

the land in this suit. The question of occupancy rights was never raised in the original plaint. It only occurs in the disallowed amendment thereof;

even then it is indefinite as it alleges that some of them (defendants 43 to 99) contend that they have kudivaram rights." It is curious that if it is of

such importance to the plaintiffs to have this question decided it was not raised before it does not appear that it was raised in the former partition

suits of 1891 and 1910. In Section Ramakrishna Pillai v. Krishnaswami Pillai (1922) 15 L.W. 667 I examined many of these cases and came to

the conclusion that though the Court will interfere in revision with an interlocutory order, such interference should be exercised with extreme

deligence, the general rule being against such interference. Can I say here that the Court below acted perversely or in a manner to cause

irreparable loss to plaintiffs? It appears to me that the Court below exercised its discretion correctly and further that the loss or inconvenience to

the plaintiffs may be that instead of being able to insist on a separate investigation into the rights of the tenants in this suit, they may have hereafter to

bring separate suits against such tenants as they may find interfering with their rights of possession which was exactly the state of things in

Ramakrishna Aiyar v. Krishna Aiyar (1907) 18 M.L.J. 85.

4. On a careful consideration of the facts and authorities I have come to the conclusion that these are cases in which I ought not to interfere in

revision. I accordingly dismiss both revision petitions with costs of defendants 1 and 30.