
(1895) 09 MAD CK 0015
In the Madras High Court

Saminadha Pillai and Others

APPELLANT

Vs

Thangathanni

RESPONDENT

Date of Decision : 23-09-1895

Acts Referred:

Citation : (1896) ILR (Mad) 70

Hon'ble Judges : Shephard, J; Best, J

Bench : Division Bench

Judgement

1. We agree with the conclusions of the Subordinate Judge on the second and third issues. The question whether the rule of survivorship holds

good among a group of heirs who succeed on the extinction of a divided branch of the family has not been actually decided in this Court. In

Gopalasami v. Chinnasami ILR 7 Mad. 458 the inclination of the Court was evidently in favour of the contention that the rule did not apply in the

case of daughters' sons succeeding. In principle there is no distinction between that case and the present. In both it is an instance of obstructed

heritage, the heirs being ascertained at the time of the death and taking per capita. Since the date of the Madras case the question has been

considered in Calcutta, and the conclusion arrived at was that the rule of survivorship does not apply to property taken in the ordinary course of

inheritance as distinguished from property in which persons have an interest on birth Jasoda Koer v. Sheo Pershad Singh ILR 17 Cal. 36 see also

Nallatambi Chetti v. Mukunda Cheta 3 M.H.C.R. 455. We think this view is correct. To hold otherwise would be to recognize as coparceners

with rights of survivorship a group of persons who might be descended from different parents and might at the same time belong to a larger group,

having another and distinct family property of their own.

2. Apart from this there is the finding which is amply supported by the evidence that the three heirs--Ramasami, Chockalingam and the plaintiff's husband--were divided when the property devolved upon them.