
(1910) 04 MAD CK 0071
In the Madras High Court

Sankaralinga Maistry

APPELLANT

Vs

Poonamalai Maistry and Another

RESPONDENT

Date of Decision : 01-04-1910

Acts Referred:

Citation : 6 Ind. Cas. 423

Hon'ble Judges : Ralph Benson, J; Krishnaswamy Aiyar, J

Bench : Division Bench

Judgement

1. We are unable to agree with the Subordinate " Judge. Exhibit D. assigns the suit property to Palavesa Maistry in its entirety. His brothers and himself were entitled to keep cattle pens on the site separately. This cannot affect Palavesa's ownership. The plaintiff, who has succeeded to the rights of one of the brothers, claims partition as part owner. We think he is not entitled to this. The instrument is clear in giving the ownership to Palavesa. Mr. Rangachariar asks us to give the plaintiff a decree for an injunction restraining the defendant from interfering with the plaintiff's user of the site as a cattle pen. The plaintiff did not base his suit on Exhibit D. He is entitled to have only a portion of the site set apart for his use. This he must seek in a suit properly framed for the purpose. We do not think we can allow him to convert this, suit for partition of common ownership into a suit for the prevention of interference with a right in the nature of an easement. The decision in *Narendra Nath Baruri v. Abhoy Gharan Chattopadhyaya* 34 C. 51 : 4 Cri.L.J. 437 : 11 C.W.N. 20 : 1 M.L.T. 364 (F.B.), has no bearing, for there the plaintiff prayed in the alternative for a declaration of ownership or the establishment of an easement in respect of a ditch. Here the plaintiff prayed only for partition. We are asked in second appeal to treat it as a suit relating to an easement. This we must decline to do. We reverse the decree of the Subordinate Judge and restore that of the Munsif with costs here and in the lower appellate Court.