

(1930) 03 MAD CK 0038
In the Madras High Court

Sankaranarayana Aiyar and Another

APPELLANT

Vs

Sankaranarayana Aiyar and Others

RESPONDENT

Date of Decision : 19-03-1930

Acts Referred:

Citation : 129 Ind. Cas. 235(1)

Hon'ble Judges : Vepa Ramesam, J

Bench : Single Bench

Judgement

Vepa Ramesam, J.—This revision petition is filed against an order of the Subordinate Judge of Tinnevely refusing to strike out the names of defendants Nos. 4 to 16 who had been previously added as parties to the suit O.S. No. 12 of 1929. The suit was one for partition. The 1st and 2nd defendants are the sons of the 1st plaintiff and the 3rd defendant is the son of the 1st defendant. The 2nd plaintiff is the grandson of the 1st plaintiff. On the 1st defendant's allegations that there had been alienations of the family properties by the 1st plaintiff in favour of defendants Nos. 4 to 16 they were previously directed to be made as parties by the Court. Now the plaintiffs apply that they may be expunged. The Subordinate Judge refused the plaintiffs' prayer and hence this revision petition. Before me the learned Advocate for the plaintiffs relied on the case of *Norris v. Beazley* (1877) 2 C.P.D. 80 : 46 L.J.P.C. 169 : L.T. (sic). There Coleridge, C.J. pointed out that defendants to be added must be defendants against whom the plaintiff has some cause of complaint and it was never intended to apply where the person to be added as defendant is a person against whom the plaintiff has no claim. This is perfectly true and it is, no doubt, the general rule but as *Danman, J.*, in the same case points out if a very strong case is made out other parties against whom the plaintiff does not wish to, proceed may be made parties. In cases relating to partition of Hindu joint family properties alienees of joint family properties may be made parties at the instance of the parties other than the plaintiffs. Similarly the case in *Sitaramayya v. Rammappayyu* 39 Ind. Cas. 160 : 5 L.W. 207 is a case where it was found that there was no need to bring in additional parties and if such a need is found additional parties will be

rightly made parties. On the allegations of the 1st defendant the order of the Court below is right. It may be that if the 1st defendant fails to make out his case ultimately, the costs due to the added parties should be paid by him. If he succeeded in making out his case then it may be that the plaintiffs may be liable for the costs of these parties. Whether anybody should be made to pay the costs of the added parties depends on the finding in the case after the trial. It is said that the plaintiff has to send summonses to these defendants. So far as this is concerned, I direct that copies of the complaints and the summonses should be issued at the expenses of the 1st defendant. Subject to this modification the order of the Subordinate Judge is confirmed and the petition is dismissed with costs.