

(1935) 01 MAD CK 0036
In the Madras High Court

Sivarama Pillai and Others

APPELLANT

Vs

Ganesarathnam Pillai and Others

RESPONDENT

Date of Decision : 25-01-1935

Acts Referred:

Citation : AIR 1935 Mad 353 : 159 Ind. Cas. 893

Hon'ble Judges : Stone, J

Bench : Division Bench

Judgement

Stone, J.—In this case a purchaser sues his vendor and a tenant for possession of the subject matter of the sale. A third party applies to be

made a party alleging that the vendor was not entitled to sell the whole which, according to him, is joint family property in which the defendant is

entitled to one half. That third party had, before this suit, brought an action against the present plaintiff, the present defendant 1 (tenant) and the

present defendant 2 (vendor) claiming half the property. It will thus be seen that in the one case all the necessary parties are before the Court and

in the other case they are not. If the two cases are not tried together or not consolidated, the result will be that there will be two judgments and,

owing to the differences in the matters in dispute, one judgment may go to one appellate Court and the other judgment to another appellate Court

and, as a consequence, conflicting decisions might conceivably be arrived at and it might be decided in the result that the plaintiff in this case is

entitled to possession against the tenant and the plaintiff in the other case is entitled to possession against the tenant as to half. It is, in my opinion, to

avoid any such difficulties as this that Order 1, Rule 10, Civil P. C. (which in the same as Order 16, Rule 11 of the Rules of the Supreme Court),

enables the Court to add a third party where it is necessary so to do in order to enable the Court, effectually and completely to adjudicate and settle all the questions; involved in the suit. It is true that the principal reason for that order is to avoid multiplicity of actions and in this case it would have been much better had the plaintiff joined the defendants and the respondent in one action. The difficulty in the way of so doing is to be found in the fact that the present respondent had already brought a suit. Another possible way of dealing with the position would have been to consolidate the suits. The rule as to consolidation in this Presidency does not however apply. The third alternative is to join the respondent. The learned Judge. has decided that this is a proper case for joining the respondent. In England it has been decided that, where rights to property are in dispute, persons having legal title should be represented (see notes to Order 16, Rule 1 and Order 16, Rule 11 of the Rules of the (Supreme Court). There is also authority in this Presidency and in particular *Pitahayya v. Rattamma* 1929 Mad. 268 and *Vydianada v. Sitaramayyan* (1882) 5 Mad 52, and *I.L.E. 5 Mad. 52* to justify the joining of the respondent as defendant in this suit. However, there is something to be said for the petitioner's position that the should not be the consequence of the joining of the respondent, be prejudiced in the matter of costs. The respondent is already a party to a suit that would, as to half of the subject-matter of the sale, decide the matter as between him and the petitioner. The petitioner is now paving thrust upon him the same party in a suit that he is bringing against his vendor and the tenant and, in my opinion, he should not, as a consequence of that addition of this respondent as party in that suit, have imposed upon him any further burden as to costs. This addition is made in order that the Court may properly work out the rights as between the parties and to avoid a possible conflict of decisions; and the trial Court should, in my opinion, in dealing with the matter of costs, so provide that the plaintiff will not, in any event, be put to more expense as regards costs as a consequence of the joinder of the respondent. The petition accordingly fails; but I make no order as to costs in so far as I have to some extent varied the order of the lower Court by adding this direction as to costs.