

(1912) 01 MAD CK 0037
In the Madras High Court

Srinivasa Sundara Thathachariar

APPELLANT

Vs

Krishnasamy Iyengar

RESPONDENT

Date of Decision : 24-01-1912

Acts Referred:

Citation : (1912) ILR (Mad) 354

Hon'ble Judges : Ralph Benson, J; Miller, J

Bench : Division Bench

Judgement

1. We think that when Krishnasamy Iyengar alienated his one-third interest in the co-parcenary house in 1880, the joint-tenancy in respect of it was put an end to. See remarks of Krishnasamy Iyer, J., at page 246 of the case of Chinnu Pillai v. Kalimuthu Chetty (1911) 2 M.W.N. 238 : 9 M.L.T. 389 : 21 M.L.J. 246 : 35 M.K 47 : 9 Ind. Cas. 596 and the plaintiff and his grandfather, who were the only coparceners at the time, became tenants-in-common, each having one-third of the house as his separate property. When the alienated one-third was purchased by the grandfather in the plaintiff's name in 1881 under Exhibit C, there being no evidence to show that the funds came from elsewhere, it must be held that the purchase was with the grandfather's funds and for the benefit of his grandson, the plaintiff, in whose name the deed stood. The plaintiff, therefore, was at that time entitled to two-thirds of the house, and the grandfather to one-third, and on the death of the grandfather, Krishnasami, who was his son, became entitled to one-half of that one-third, the other one-half going to the plaintiff. This would be the share accruing to Krishnasami whether he took by in assuming that the right of Survivorship existed in all respects among the coparceners at the time of the alienation except with regard to the house, part of which was alienated. See the remarks of Sir Bhashyam Aiyangar, J., at page 717 of the case of Aiyugari Venkataramayya v. Aiyugari Ramayya 25 M.P 690.

2. The result is that in modification of the decree of the Courts below, the plaintiff must have a declaration of his right to five sixths of the house. He will give and receive proportionate costs in both the Courts below. He will have his

costs in this Court.