

(1901) 11 MAD CK 0005
In the Madras High Court

Subharaya Tawker

APPELLANT

Vs

Rajaram Tawker and Others

RESPONDENT

Date of Decision : 01-11-1901

Acts Referred:

Citation : (1902) 12 MLJ 91

Judgement

1. We are unable to agree with the decision of the District Judge.
2. Under Exhibit A the members of the family became completely divided in interest in respect of all their property, but so far as the village now in question is concerned, it was agreed that the plaintiff was to receive one-fourth of the net income (on account of his one-fourth share of the village) from the eldest member of the family who was to manage the village.
3. Such an agreement cannot bar the plaintiff's right to sue for partition by metes and bounds of his one-fourth share of the village as one of the four tenants in common.
4. As regards the house, the plaintiff agreed to receive Rs. 500 in lieu of his share in the event of his refusing to live in the house, He is not entitled to a portion of it if the co-sharers are willing to pay him the Rs. 500.
5. We, therefore, set aside the decree of the lower appellate Court, and modify the decree of the District Munsif by directing that the plaintiff do recover one-fourth share of the house unless the co-sharers or any of them deposit in court for payment to the plaintiff Rs. 500 within three months from this date. In other respects we restore the decree of the District Munsif.
6. Plaintiff must have his costs in this and in the lower appellate Court.