

**(1901) 11 MAD CK 0018**  
**In the Madras High Court**

Subyanakayanamurti and Another

APPELLANT

Vs

Tammanna and Another

RESPONDENT

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**Date of Decision :** 13-11-1901

**Acts Referred:**

Specific Relief Act, 1877 — Section 42

**Citation :** (1902) ILR (Mad) 504

**Hon'ble Judges :** Bhashyam Ayyangar, J;Benson, J

**Bench :** Division Bench

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**Judgement**

1. A preliminary objection is taken that the suit is barred by the proviso to Section 42 of the Specific Relief Act, 1877. An issue was raised on this point in the lower Court, but the Subordinate Judge held that the objection was invalid, because the lands in suit were in the possession of tenants under leases granted by plaintiff and first defendant.

2. We are unable to concur in this view. The leases, we observe, were granted in the life-time of the father of the plaintiff and first defendant, and were for a year only and had expired before the suit was filed. But even if the leases were subsisting leases granted after the father's death it would make no difference in the decision of the present question. The proviso to Section 42, Specific Relief Act, prohibits the Court from granting a declaration like that asked for in this suit "where the plaintiff being able to seek further relief than a mere declaration of title omits to do so." Here it was open to the plaintiff to have sued for partition of his share in the joint family property, if it was joint family property as alleged by plaintiff. That was a further relief of a very substantial character, and even if the land were in possession of tenants entitled to continue in occupation it would be no bar to a partition of the property among the members of the family, the tenant's right of occupation, if any, not being affected by such partition. We do not think that the suit is one in which we should allow the plaint to be amended at this stage and the suit converted into a partition suit, as the objection was taken from the very beginning and plaintiff notwithstanding persisted in

continuing the suit as framed.

3. On the preliminary ground stated above we must set aside the decree of the Subordinate Judge and dismiss the plaintiff's suit against all the defendants with costs throughout.

4. No order is required on the memorandum of objection.