

(1924) 01 MAD CK 0001

Madras High Court

Case No: None

Sengoda Goundan

APPELLANT

Vs

Muthu Goundan and
Others

RESPONDENT

Date of Decision: Jan. 26, 1924

Citation: AIR 1924 Mad 625

Hon'ble Judges: Spencer, O.C.J.; Kumaraswami Sastri, J

Bench: Full Bench

Judgement

Spencer, Og. C.J.

1. This suit is for partition and the question argued before us relates to the plaintiff's claim to succeed to the share of his deceased minor brother by right of survivorship. There was a previous suit by the plaintiff and his brother, both being minors represented by a next friend, for partition, which ended in a compromise decree, Ex. A, dated 24th November 1915. It has been argued before us that, when two persons ask for a partition, it should be implied that they intend to get deviled from each other as well as from the joint family to which they belong. Nothing can be gathered from the fact that in the former suit, the two minor plaintiffs combined to ask for a partition as to their intention to become divided inter se. The right to obtain a partition, though, personal, happened to be common to both the plaintiffs, and common question of law and fact arose out of their suing. The mere fact that there was one trial and one decree in the former suit was a consequence of procedure applicable to persons suing-under

the same cause of action rather than conduct showing an intention to become separated inter se.

2. In *Mt. Jatti v. Banware Lal* 1923 P.C. 136, the Privy Council quoted a former decision by that body, *Balabux v. Rukhmabai* [1902] 30 Cal.

725, in which Lord Davey remarked that there was no presumption when a co-parcener separates from others that the latter remained united. The

agreement to remain united must be proved like any of the fact. The Privy Council did not say that there was no presumption in such a case that the

other co-parceners became divided, as it was not necessary to do so for that decision. But it seems to me that such is the case. In *V. Rangasami*

Naidu and Another Vs. Sundarajulu Naidu and Another, , it was held that the separation of one member of a co-parcenary was not necessarily a

separation of the remaining members and in *Palaniammal Vs. Muthuvenkatachala Maniagarar and Others*, . Sir John Wallis, C.J., and my learned

brother held that, if a partition takes place under a decree of Court, the effect of the decree on the remaining co-parceners must be determined by

the terms of the decree or by the scope of the suit. I think that Sadasiva Aiyar, J. went too far in *Mangal Sen v. Muhammad Hussain* [1915] 16

M.L.T. 610, in observing that there was a presumption that, when one of several co-parceners has become divided, the others also have become

divided in status. The Privy Council decisions to which he referred do not support such a proposition.

3. If the effect of the former decree is to be determined by the terms of it, we find from Ex. A that in the former suit both the plaintiff and his

brother had the same next friend to represent them and the decree speaks of their two-thirds share, not of their properties as two shares each

representing one-third of the whole. There was no order that their two thirds share should be divided into separate shares, and no authority has

been shown for a guardian of two undivided minors dividing their status so as to make them lose their rights of survivorship to each other. The

District Judge observes that the plaintiff and this brother did not sue for division inter se and that the decree does not divide their shares, and he

formed a conclusion from their conduct that they remained undivided, agreeing with the first Court on that point. I see no reason to interfere with

that finding on any point of law. I would, therefore, confirm the decree of the lower appellate Court, and, as the other grounds of Second Appeal

are untenable and have not been seriously pressed, this Second appeal must be dismissed with costs.

4. The Memorandum of Objections, which relates to mesne profits anterior to the date of the suit is dismissed with costs.

Kumaraswami Sastri, J.

5. I agree with my Lord. I think there is no authority for holding that, where two members of a joint family sue for partition, it necessarily divides

them inter se. The observations of the Privy Council in V. Rangasami Naidu and Another Vs. Sundarajulu Naidu and Another, and Palaniammal

Vs. Muthuvenkatachala Maniagarar and Others, are clearly against the contention.