

MUTHIA  
CHETTI  
v.  
ORR.

COLLINS, C.J., SHEPARD and DAVIES, JJ., who delivered the following judgment:—

JUDGMENT.—The appellant not being represented and not appearing, we dismiss the appeal with costs. Under the provisions of section 575, Civil Procedure Code, the order of this Court, dated 24th January 1894, in *Orr v. Muthia Chetti*(1) prevails, and the order of the District Court of Madura, dated 26th August 1892, passed on C.M.A. No. 8 of 1892, is reversed with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Davies and Mr. Justice Boddam.*

1897.  
January 7.

SUBRAMANIAN CHETTI AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

RAKKU SERVAI AND OTHERS (DEFENDANTS), RESPONDENTS.\*

*Succession Certificate Act—Act VII of 1889, s. 4—Debt due to Hindu family jointly.*

In a suit by the members of a joint Hindu family for a debt due on a document which is executed in favour of a deceased member of the family, but on the face of which it does not appear that the debt is a joint debt, the plaintiffs need not produce a certificate under the Succession Certificate Act, if they can prove that the debt was due to the family jointly :

*Venkataramanna v. Venkayya*(2) explained.

*Quare* ; whether a plaintiff, in a suit to recover money by the sale of property mortgaged, need produce a certificate under the Succession Certificate Act.

SECOND APPEAL against the decree of P. Narayanasami Ayyar, Subordinate Judge of Madura (West), in appeal suit No. 763 of 1894, reversing the decree of S. Ramasami Ayyangar in original suit No. 158 of 1894.

The suit was brought on a mortgage executed by the first defendant, the managing member of a joint Hindu family consisting of himself and defendants Nos. 2 to 5. The mortgage was executed on the 15th of November 1870 and provided that the mortgagee should enjoy the property for four years, after which

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(1) I.L.R., 17 Mad., 501.

\* Second Appeal No. 1130 of 1895.

(2) I.L.R., 14 Mad., 377.

time the mortgagee might redeem on payment of the mortgage money. The mortgage was executed in favour of Nachiappa, the father of plaintiffs Nos. 1 and 2, and on his death (some time before 1881) the mortgage debt passed by survivorship to his sons and his brother Subramanian Chetti. Subsequently Subramanian Chetti assigned his share to plaintiff No. 3. The plaintiffs were for some time in possession of the land when, as they alleged, they were ousted by the defendants. They now sued to recover the amount due under the mortgage-deed by the sale of the property mortgaged. The District Munsif decreed for them. On appeal the Subordinate Judge reversed the decree of the District Munsif on the ground that the plaintiffs had not produced a certificate under the Succession Certificate Act. He said, "there is nothing in exhibit A to show that the debt was a joint debt, due to the father and sons. In *Venkataramanna v. Venkuyya*(1) the Madras High Court have held that a Hindu is not entitled to sue on a bond executed in favour of his undivided father, deceased, without the production of a certificate under Act VII of 1889, unless it appears on the face of the bond that the debt claimed was due to the joint family consisting of the father and the son. The District Munsif dwells on this point in paragraph 6 of his judgment. The defendants have taken an issue on the question, and there is no admission. Under section 4 of Act VII of 1889, no Court can pass a decree unless a certificate is produced. The arguments of the District Munsif are not supported by law. In the recent Full Bench case of *Fateh Chand v. Muhammad Bakhsh*(2), it has been held by the Allahabad High Court that production of certificate of succession is a condition precedent to decree in a suit for sale on mortgage, dissenting from the ruling of the Calcutta High Court in *Kanchan Modi v. Baij Nath Singh*(3). Therefore, following the rulings of the Madras and Allahabad High Courts, the suit ought to have been dismissed."

SUBRAMANIAN  
CHETTI  
v.  
RAJESU  
SERVAL.

The plaintiffs appealed on the following grounds :—

(1) That the Subordinate Judge is wrong in holding that a succession certificate was necessary.

(2) The debt being due to an undivided family and the suit being one for sale of mortgaged property, the Act does not apply.

(1) I.L.R., 14 Mad., 377.

(2) I.L.R., 16 All., 259.

(3) I.L.R., 19 Calc., 336.

SUBRAMANIAN  
CHETTI  
v.  
RAKKU  
SERVAL.

(2) Even if succession certificate was necessary the Subordinate Judge should have merely given time to the plaintiffs for producing it and not dismissed the suit.

*Krishnasami Ayyar* for appellants.

*Sivasami Ayyar* for respondents.

JUDGMENT.—As the Munsif found that the debt was a joint debt and that finding was not disputed in appeal, we must decide, following *Venkataramanna v. Venkayya*(1), that no succession certificate was necessary. The strict interpretation put on that case by the Subordinate Judge, viz., that it is only when the fact of the debt being a joint one appears on the face of the document that a certificate is not necessary, has not been adopted by this Court itself which has recognized other proof of the debt being joint beyond what appears on the face of the document.

It has further been urged that this being a suit on a mortgage for sale of the mortgaged property, the Succession Certificate Act does not apply, and the case of *Baid Nath Das. v. Shamanand Das*(2) has been relied on in support of the contention. That case, however, is in conflict with the Full Bench case of *Fateh Chand v. Muhammad Bakhsh*(3). We are not called upon to decide the matter now, as we find for another reason that no certificate was required. The second appeal must, therefore, be allowed, and we reverse the decree of the Lower Appellate Court and restore that of the District Munsif. The appellants' costs in this and the Lower Appellate Court must be paid by the respondents. The time for payment of the mortgage money is extended to three months from this date.

(1) I.L.R., 14 Mad., 377.

(2) I.L.R., 22 Calc., 143.

(3) I.L.R., 16 All., 259.