

RENGA-  
SAWMI  
NAICKEN  
GANG-  
AMMAL.

The substantial question involved in the second appeal was: the nature of the right of Nagammal under exhibit III.

The Hon. Mr. P. S. Sivaswami Ayyar for appellant.

T. V. Seshagiri Ayyar for first respondent.

JUDGMENT.—We think that exhibit III evidences an absolute grant to the widow alone in satisfaction of all her claims. There is no grant to her daughter, who is referred to merely as her heir in the ordinary course, and to show that on the death of the widow, the grantor and his branch of the family shall have no claim to the land. The widow having survived her daughter, the latter never acquired any interest in the land nor did her husband, the appellant. In this view the appeal fails and is dismissed with costs.

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## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice  
Subrahmania Ayyar.*

PERIA KARUPPAN AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

VELAYUTHAM CHETTI AND OTHERS (DEFENDANTS),  
RESPONDENTS.\*

1906  
January 4.

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*Parties, joinder of—Persons jointly interested with plaintiff may be made defendants without proof that they refused to join as plaintiffs.*

Where some only out of several persons jointly interested in a cause of action bring a suit impleading the others as defendants, such suit is sustainable though it is not shown that the parties joined as defendants refused to join as plaintiffs.

*Pyari Mohun Bose v. Kedarnath Roy*, (I.L.R., 26 Cal., 409), followed.

*Biri Singh v. Nawal Singh*, (I.L.R., 24 All., 226), followed.

SUIT to recover the amount due on a promissory note executed by the first defendant in favour of the plaintiffs and the fifth defendant. The first defendant pleaded *inter alia* that the suit was bad for non-joinder of the fifth defendant as a plaintiff.

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\* Second Appeal No. 4 of 1904, presented against the decree of H. Moberly, Esq., District Judge of Madura, in Appeal Suit No. 13 of 1903, presented against the decree of M.E.Ry. V.R. Kuppaswamy Ayyar, District Munsif of Sivaganga, in Original Suit No. 280 of 1901.

The District Munsif upheld this objection and dismissed the suit. His judgment was confirmed on appeal by the District Judge.

PERIA  
KAKUPPAN  
v  
VELA-  
YUTHAM  
CHETTI.

Plaintiffs preferred this second appeal.

*K. Srinivasa Ayyangar* for *P. R. Sundara Ayyar* for appellants.

The Hon. Mr. *P. S. Sivaswami Ayyar* for first respondent.

JUDGMENT.—We think this suit must be regarded as a suit on a promissory note executed in favour of plaintiffs Nos. 1 and 2 and Thambisamia Pillai. We do not think the suit ought to have been dismissed on the ground that Thambisamia Pillai had been improperly made a defendant since it was not shown that he had refused to be made a plaintiff. We agree with the decisions of the Full Bench of the Calcutta High Court in *Pyari Mohun Bose v. Kedarnath Roy*(1), and of the Allahabad High Court in *Biri Singh v. Nawal Singh*(2), and we are prepared to follow them. The decisions of the lower Courts dismissing the suit must be set aside, and the case must go back for disposal according to law. The costs of this appeal and costs in the lower Appellate Court will abide the event.

## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Moore.*

THIRUVENGADATHIENGAR AND OTHERS (PLAINTIFF AND  
HIS LEGAL REPRESENTATIVES), APPELLANTS,

v.

VAIDINATHA AYYAR AND ANOTHER (DEFENDANTS),  
RESPONDENTS.\*

1905  
November  
22, 23.

*Civil Procedure Code—Act XIV of 1882, ss. 525, 520, 526—Order to file or refusing an application to file an award appealable—Award determining matters not referred cannot be filed.*

An order made on an application under section 525 of the Code of Civil Procedure to file an award, whether such prayer is granted or refused, is a decree and appealable as such.

(1) I.L.R., 26 Calc., 409.

(2) I.L.R., 24 All., 226.

\* Second Appeal No. 669 of 1903, presented against the decree of M. R. Ry. N. Sarvothama Rao., Subordinate Judge of Tanjore, in appeal Suit No. 491 of 1899, presented against the decree of M. R. Ry. B. Veeraswamiiah, District Munsif of Mannargudi, in Original Suit No. 179 of 1898.