

## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr Justice Moore*

1905  
December 4.

RENGASAWMY NAICKEN (FIRST DEFENDANT), APPELLANT;

v.

GANGAMMAL AND OTHERS (PLAINTIFF AND DEFENDANTS  
Nos. 2 AND 3), RESPONDENTS.\*

*Grant, construction of—Mention of a person as heir of grantee confers  
no interest on such person.*

Where a deed of grant to a widow recites that she has no other heirs than her daughter, and that the lands shall belong to such daughter at her death, the grant is not to be construed as a grant to the widow and her daughter. The grant is absolute and to the widow alone, the daughter taking no interest under it.

THE plaintiff's case was that plaintiff and defendants Nos. 2 and 3 were sisters: that their father Kopini Venkata Naiken had an undivided brother Kopini Subba Naiken; that Kopini Subba Naiken died about 40 years ago, leaving his widow Nagammal and a daughter Vengilammal; that plaintiff's father Kopini Venkata Naiken left the said properties to Nagammal to be enjoyed by her during her lifetime; that Nagammal enjoyed those properties and died about five years ago; that Nagammal's daughter Vengilammal and Vengilammal's daughter and son predeceased Nagammal; that as first defendant had married Nagammal's daughter Vengilammal he, as the agent and trustee, managed the affairs of Nagammal; that plaintiff's father Venkata Naiken and her mother Velammal died about 20 and 15 years ago, respectively; that after Nagammal's death plaintiff and defendants Nos. 2 and 3 became the sole owners of the said properties; that in spite of plaintiff's repeated demands to put plaintiff and defendants Nos. 2 and 3 in possession of those properties, first defendant has been unlawfully enjoying them questioning the title of the plaintiff and defendants Nos. 2 and 3 thereto.

The plaintiff sued for possession of the properties and mesne profits.

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\* Second Appeal No. 1038 of 1903, presented against the decree of Vernor A. Brodie, Esq., District Judge of Coimbatore, in Appeal, Suit No. 182 of 1902, presented against the decree of M.R.Ry. K. Krishnamachariar, District Munsif of Udamalpet, in Original Suit No. 1032 of 1901.

The first defendant contended *inter alia* that Venkata Naiken was not the owner of the suit properties; that he did not give them to Nagammal to be enjoyed by her during her lifetime, that plaintiff's father Venkata Naiken and Nagammal's husband Subba Naiken became divided and acquired certain properties in common; that Subba Naiken died subsequently, *i.e.*, about 50 years ago; that on Nagammal's demand for separate possession of her husband's share of those properties, Venkata Naiken gave her the entire properties items 1,3 and 4 and also the southern part of item 24'78 acres in extent on 27th November 1850; that he also executed to her on the same day a release in respect thereof; that Nagammal became therefore entitled to those properties; that as Venkata Naiken clearly stated in the release that neither he nor his heirs can set up any title to the properties set forth therein and that they have been absolutely given to Nagammai, neither Venkata Naiken nor any of his heirs can now set up any title thereto; that Nagammal having enjoyed those properties gave them orally, about 30 years ago, to her daughter Vengilammal, and daughter's husband, first defendant, at their marriage, and put them in immediate possession thereof; that the first defendant has been enjoying them absolutely since then.

The material portion of exhibit III, the release deed referred to by the first defendant was as follows:—

Partition Karar, dated 14th Karthigai of Satharana (27th November 1850) executed and given by (me) Venkata Naiken, son of Pusari Velappa Naiken, residing in Jalilpatti, to my younger brother's wife Nagammal, residing in the said village.

Myself and your husband Subba Naiken have, with difficulty and at our expenses, acquired fields, garden and adinam well, etc. Your husband is dead and you have no male issue but have one daughter.

\* \* \* \*

The above said fields, cattle, house and site shall belong to you alone and neither myself nor my Ullittar shall have any right to or connection with them. After your life the said lands, cattle and house shall belong to your daughter Venkatammal.

The District Munsif dismissed the plaintiff's suit.

The District Judge on appeal passed a decree for a part of her claim.

The first defendant appealed to the High Court:

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 Calc., 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.