

CHINNASAMI was himself about 30 years of age and his wife was 5 or 6 years  
 MUDALIAR younger. There is no evidence worth the name that they were  
 v. otherwise than healthy, and very soon after the time the adoption  
 AMBALA- is said to have taken place, the plaintiff's wife became pregnant.  
 VANA Another circumstance strongly against the defence story is, the  
 MUDALIAR. utter absence of written evidence in support of it between 1889 and  
 1898, when, for the first time, the adoption was, as already stated,  
 set up. Considering that from the year 1893 the plaintiff and the  
 first defendant have been quarrelling about family property and  
 engaged in litigation, it is not probable, that the first defendant  
 would, if his present story be true, not have taken steps to secure  
 the rights of the second defendant as adopted son, by claiming  
 partition on his behalf, or securing recognition of the adoption in the  
 proceedings connected with the partition. Lastly, there is the fact  
 that, practically, throughout the whole period the second defendant  
 has been maintained by the first defendant without the plaintiff  
 contributing anything towards his support. The appeal fails and  
 is dismissed with costs.

## APPELLATE CIVIL.

*Before Sir S. Subrahmaniam Ayyar, Officiating Chief Justice,  
 and Mr. Justice Boddam.*

MEYAPPA CHETTI AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

PERIANNANCHETTI AND OTHERS (DEFENDANTS), RESPONDENTS.\*

1905

July 31.

August 1.

*Civil Procedure Code—Act XIV of 1882, s. 28—Misjoinder of parties—Claim in  
 the alternative against debtors and agent of plaintiff.*

The plaintiff, in a suit to recover money from certain persons alleged to have borrowed money from his agent, is entitled, when the alleged debtors deny the loan, to make his agent a co-defendant and pray for a decree in the alternative against such agent. Such claims are made in respect of the same matter within the meaning of section 28 of the Code of Civil Procedure.

*Muthappu Chetty v. Muthu Palani Chetty* (I.L.R., 27 Mad., 80) distinguished.

SUIT to recover money alleged to have been lent by the fourth defendant, the plaintiff's agent, to the first defendant who was

\* Civil Miscellaneous Appeal No. 193 of 1904, presented against the order of M.R. Ry. W. Gopalachariar, Subordinate Judge of Madura (East), dated 13th August 1904, in Original Suit No. 8 of 1904,

the undivided father of defendants Nos. 2 and 3. The first defendant denied receipt of the money from the fourth defendant. The original plaint prayed for a decree against defendants Nos. 1 to 3 or in the alternative against the fourth defendant. The Subordinate Judge ordered the plaint to be amended by striking out the claim against defendants Nos. 1 to 3, or against the fourth defendant. Against that order the plaintiffs preferred the appeal.

METAPPA  
CHETTI  
v.  
PERIANNAN  
CHETTI.

V. Krishnasami Ayyar for appellants.

G. Krishnaswami Ayyar and K. Jagannatha Ayyar for respondents.

JUDGMENT.—The claim here was for the recovery of money stated to have been lent to the first defendant, the father of the second and third defendants, by the fourth defendant who was the plaintiffs' agent at Singapore. As the first defendant had prior to the suit denied that any loan had been made to him by the fourth defendant, and as the fourth defendant maintained that the loan was in truth made, the latter was impleaded and relief against him prayed for in the alternative in respect of the sum stated to have been lent. We agree with the contention on behalf of the appellant that section 28, Civil Procedure Code, warrants such alternative claims being made, the matter in respect of which the claim is made being the same within the meaning of the section, *Muthappa Chetty v. Muthu Palani Chetty*(1) is distinguishable. In that case the matter of dissolution of partnership with which the third defendant was concerned was distinct from, and unconnected with, the claim for damages in regard to which alone the first defendant was sought to be made answerable. See *Budree Doss v. Hoare Miller & Co.*(2) and *Rajdhur Chowdhry v. Kalikristna Bhattaacharya*(3), *Madan Mohun Lal v. Holloway*(4), *Honduras Railway Co. v. Tucker*(5), *Child v. Stenning*(6) and *Bennetts & Co. v. McInerath & Co.*(7). We must therefore set aside the order of the Subordinate Judge, and the proceedings which have since taken place in pursuance thereof, and direct that the suit be proceeded with on the plaint as it originally stood and disposed of according to law. The costs will be provided for in the decree.

(1) I.L.R., 27 Mad., 80.

(2) I.L.R., 8 Calc., 170.

(3) I.L.R., 8 Calo., 968.

(4) I.L.R., 12 Calc., 555.

(5) L.R. 2 Ex.D., 301.

(6) L.R., 5 Ch.D., 695.

(7) L.R. (1896), 2 Q.B.D., 464.