

## APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar and Mr. Justice Moore.

1902.  
March 12.

UPPALA RAGHAVA CHARLU (Plaintiff No. 1), APPELLANT,

v.

UPPALA RAMANUJA CHARLU AND OTHERS (DEFENDANTS),  
RESPONDENTS.\*

*Hindu Law—Suit for partition—Evidence that the joint property had been leased  
—Available for partition—Maintainability of suit.*

In the course of the hearing of a suit for partition brought by one of several joint shrotriendars against the rest, it transpired that the lands of which partition was sought had, a few years before suit, been let on lease for a period of twenty-four years:

*Held*, that this was no ground for rejecting the suit. Delivery of the lands which might be found to be in the possession of tenants could be given under section 264 of the Code of Civil Procedure.

SUIT to recover land by partition. According to the plaint, the land in question was attached to the shrotriom holding in the village of Maddiralapand, and first plaintiff together with defendants Nos. 1 to 9 were entitled to it in shares which varied in extent. First plaintiff sued for partition of the land among the shrotriendars and for delivery to him of his share. The claim was supported by some of the defendants Nos. 1 to 9, others objecting to the extent of the shares to which plaintiff alleged them to be entitled, and some being *ex parte*. Tenth defendant pleaded that some of the land was in use for common purposes, and some was in his own possession. At the trial before the District Munsif it appeared from the plaintiffs' evidence that the land had been leased by plaintiffs and the other inamdars for a period of twenty-four years from 1894. The District Munsif considered that the suit was not maintainable, as the property was not available for partition. He dismissed the suit, and the District Judge, on appeal, upheld that order.

Plaintiff preferred this second appeal.

V. C. Seshachariar for appellants.

\* Second Appeal No. 972 of 1900, against the decree of T. M. Swaminatha Ayyar, Acting District Judge of Nellore, in Appeal Suit No. 370 of 1897, against the decree of T. Swami Ayyar, District Munsif of Ongole, in Original Suit No. 750 of 1895.

*S. Srinivasa Ayyangar* for tenth respondent.

**JUDGMENT.**—The District Judge has dismissed the appeal on the ground that it was alleged that in 1894 certain lands belonging to the joint shrotriendars were leased out for twenty-four years and that consequently such lands were not available for partition or restoration to the plaintiffs. This decision cannot be upheld. Even if it be shown that certain of the shrotriend lands have been leased out under a subsisting lease, that is no ground for rejecting a suit for partition. If there is a decree for partition and the lands are in possession of tenants, delivery can be given under section 264, Civil Procedure Code. The question as to the ownership of the tenth and other defendants of the lands claimed by them as their own must of course be decided before a decree is passed for partition and such lands as they establish their right to must be excluded from the partition. This second appeal is allowed, the decree of the District Judge is reversed and the appeal will be sent back to him for decision on the merits.

The costs hitherto incurred will be costs in the cause.

UPPALA  
RAGHAVA  
CHARLU  
v.  
UPPALA  
RAMANUJA  
CHARLU.

## APPELLATE CIVIL.

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

SREE MAHANT KISHORA DOSSJEE (PLAINTIFF), APPELLANT,

1902.  
February 21.

v.

THE COIMBATORE SPINNING AND WEAVING COMPANY  
(LIMITED), (DEFENDANTS), RESPONDENTS.\*

*Indian Companies Act—VI of 1882, s. 58—Application for rectification of register—Evidence Act—I of 1872, s. 115—Estoppel—Hindu Law—Property held by head of Mutt—Presumption as to its being property of Mutt.*

The head of a Mutt applied for and was allotted shares in a company in his own name. Payments were made by him by way of calls on the shares, and by his successor in office, and the company credited the amounts paid by the successor towards the amount due as calls on the shares. Subsequently, plaintiff, another successor in the office, applied to have the company's share register altered, so that the shares should stand in the name of the Mutt. This, the directors refused to do unless plaintiff provided them with a transfer from the

\* Appeal No. 125 of 1899, against the decree of G. T. Mackenzie, District Judge of Coimbatore, in (Original Suit No. 22 of 1898.