

In this view it is unnecessary to discuss any other question for the disposal of this appeal. Differing from our learned brother, we must hold that the notice to quit which had been given by the appellant before suit was sufficient. The appeal is allowed with costs here and in the Court below.

THAYARAMMAL
v.
JUNUS
CHETTIAR.

LEACH C.J.—I agree.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice King and Mr. Justice Abdur Rahman.

NATESA PADAYACHI (PETITIONER—TWENTY-EIGHTH DEFENDANT), PETITIONER,

1939,
January 18.

v.

KRISHNA PADAYACHI AND THIRTY-SIX OTHERS
(RESPONDENTS AND LEGAL REPRESENTATIVES OF
DECEASED SECOND RESPONDENT), RESPONDENTS.*

Practice—Partition suit—Reversioner—Suit by, to recover his share of estate of last male owner improperly alienated by his widow—Reversioner with equal rights as plaintiff made a defendant in, supporting plaintiff and asking for a decree for his share—Court granting a decree to plaintiff for his share—Decree in favour of defendant-reversioner for his share—Duty to grant.

One of two reversioners sued for partition of the estate left by one K which had in the meanwhile been alienated by his widow. The other reversioner was made the twenty-eighth defendant in the suit and he filed a written statement supporting the plaintiff's case and asking that a decree might be given for his share of the property. The trial Court, though it gave a decree to the plaintiff for his share of the property, did not grant a decree in favour of the twenty-eighth defendant for his share and further dismissed an application made by him subsequently for a decree in his favour.

* Civil Revision Petition No. 460 of 1931.

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The plaintiff asserted in his plaint that he and the twenty-eighth defendant were joint reversioners with equal rights, and though the plaintiff sued only for his share and did not specifically ask that the twenty-eighth defendant's rights should be decreed in the suit, throughout the whole of the pleadings and at the trial no distinction was drawn between the plaintiff and the twenty-eighth defendant. Further the decision in the suit was to the effect that in so far as the alienations by the widow of K were not binding on the plaintiff they were also not binding on the twenty-eighth defendant.

Held that the trial Court ought to have granted a decree to the twenty-eighth defendant for his half share.

There was no reason whatever why the twenty-eighth defendant should not have been given a decree equally with the plaintiff in regard to the alienations in question.

Adhikari Vishnumurthiayya v. Authaiya(1) distinguished.

Appalanaidu v. Annamnidu(2) referred to.

PETITION under section 115 of Act V of 1908 praying the High Court to revise the order of the Court of the Subordinate Judge of Kumbakonam, dated 22nd August 1930 and made in Interlocutory Application No. 262 of 1930 in Original Suit No. 25 of 1927.

R. Rajagopala Ayyangar for petitioner.

S. Panchapagesa Sastri for respondents.

KING J. The JUDGMENT of the Court was delivered by KING J.—This revision petition relates to a suit brought by one of two reversioners for partition of the estate left by one Kannu Padayachi which had in the meanwhile been alienated by his widow Sundaram to a number of alienees. The suit was decreed in part and dismissed in part. The plaintiff asserted in his plaint that he and the twenty-eighth defendant were joint reversioners with equal rights. The twenty-eighth defendant in his written statement supported

(1) (1918) 35 M.L.J. 153.

(2) A.I.R. 1928 Mad. 555.

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the plaintiff's case and asked that a decree might be given for his share of the property. There was, however, no decree granted in favour of the twenty-eighth defendant and shortly after the decree was passed he applied for a decree in his own favour. This was refused by the learned Subordinate Judge and the question whether that refusal was right or wrong is now before us in this petition.

We have been referred to two rulings which deal with a somewhat similar situation, on the earlier one of which the learned Subordinate Judge has relied in refusing the twenty-eighth defendant his request. That is reported as *Adhikari Vishnumurthiayya v. Authaiya*(1). On the other hand there is a case reported as *Appalanaidu v. Annamnaidu*(2) in which the opposite view has been taken. The main reason in our opinion for the position in *Adhikari Vishnumurthiayya v. Authaiya*(1) is given at page 156 in these words :

“When as in the present case plaintiff sues for his own share alone and not as representing co-owners, nothing regarding the latter's share is or can legitimately be decided.”

That proposition cannot possibly apply to the present case. No doubt the plaintiff did sue for his own share and did not specifically ask that the twenty-eighth defendant's rights should be decreed in the suit. But throughout the whole of the pleadings no distinction is drawn between the plaintiff and the twenty-eighth defendant and when it came to the framing of issues we find the 5th issue framed in these words :

“Whether the alienations in favour of the contesting defendants are true, valid and binding on plaintiff and twenty-eighth defendant.”

(1) (1918) 35 M.L.J. 153.

(2) A.I.R. 1928 Mad. 555.

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KING J.

The respondent to this petition argues that there could be no decree in favour of the twenty-eighth defendant because he has been given no opportunity of putting forward any separate defence which he might have to urge against the twenty-eighth defendant's claim. That contention must be rejected in view of the terms of this issue. It is quite clear that the respondent was called upon to plead and prove any fact which suggested that though any particular alienation might not be binding on the plaintiff, it was yet binding on the twenty-eighth defendant. He has made no attempt, as already stated, to differentiate between the plaintiff and the twenty-eighth defendant in any manner whatever nor indeed even in the affidavit which he filed against the twenty-eighth defendant's application after the decree had been given did he make any positive assertion regarding any special pleas which he might have raised against the twenty-eighth defendant's claim. It is therefore clear that in the present suit there has been a decision that in so far as alienations are not binding on the plaintiff they are also not binding on the twenty-eighth defendant and there seems to us no reason whatever why the twenty-eighth defendant should not have been given a decree equally with the plaintiff in regard to these particular alienations. The mere fact that he is styled the twenty-eighth defendant and not the second plaintiff does not seem to us to be of any practical importance whatever. We therefore think that this revision petition ought, subject to certain conditions, to be allowed and that the decree for which the petitioner asks should be granted to him for his half share of what has been found by the learned Subordinate Judge to constitute the estate of Kannu Padayachi liable to division. The conditions

are that the suit in the Court of first instance shall be regarded as if filed by the plaintiff and the twenty-eighth defendant for the *whole* of Kannu Padayachi's estate and that costs are payable by both of them on that valuation. In regard to mesne profits the twenty-eighth defendant's claim shall be limited to mesne profits from 1927 onwards, that is to say, from three years before he made the application which is now under discussion in this petition. The twenty-eighth defendant must also pay before this decree can be granted to him the same court-fee as the plaintiff has paid.

Each side will bear its own costs in this revision petition.

A.S.V.

APPELLATE CIVIL.

*Before Mr. Justice Varadachariar and Mr. Justice
Abdur Rahman.*

KOKKONDA VENKATA RAMA SURYA GOPALA
KRISHNAMURTY AND SIX OTHERS (DEFENDANTS 2, 9,
11, 13, 14, 21 AND 23), APPELLANTS,

1939,
February 3.

v.

SURABHI SATYANARAYANA (PLAINTIFF), RESPONDENT.*

*Mesne profits—Hindu widow—Debts contracted by—Mortgage
—Foreclosure decree—Suit by reversioner for possession
of property in the hands of third parties with mesne
profits—Decree for possession conditional on his paying
debts binding on the estate—Mesne profits for three years
prior to suit, if can be allowed.*

In a suit by a reversioner for the recovery of possession of the properties of L from certain persons who derived

* Appeal No. 25 of 1935.