

**Sammantha Gramany and ors. Vs. Devasikamany Gramany and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/775021](http://sooperkanoon.com/775021)

**Court :** Chennai

**Decided On :** Feb-03-1910

**Reported in :** (1910)20MLJ364

**Appellant :** Sammantha Gramany and ors.

**Respondent :** Devasikamany Gramany and ors.

**Judgement :**

1. The plaintiffs sued for partition of a one- third share in undivided family property. Both the Courts below have given them a decree. Defendants Nos. 1 to 4 have preferred this second appeal making the plaintiffs alone respondents without impleading defendants Nos. 5, 6, 7 and 11 to 14 who would be entitled to a third share on the basis of the lower Court's decrees. The respondents contend that the appeal fails for non-joinder of the other defendants. The appellants rely on the fact that they alone are in possession of the suit properties, and on Order 1, Rule 9, which declares that no suit shall be dismissed for non-joinder. The rule proceeds to lay down that the Court may deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. We are inclined to think that the fact of the appellants alone being in possession does not affect the question. Nor can we accept the contention that we have no power to dismiss the second appeal. In a suit for partition, relief cannot be given to one sharer without all the sharers being brought before the Court. We are inclined to accept the respondent's argument that it is only if properly relief can be given without all the sharers being brought into Court that we may give that relief. But when that cannot

be done, the only mode of dealing with the matter in controversy may be to dismiss the appeal unless under Order XLI, Rule 20, the absent parties are joined. We might, in the circumstances of this case have been inclined to add the absent defendants as parties to this second appeal if we had reason to suppose that the appeal was sustainable. We think it unnecessary to express a final opinion on the question of non-joinder as we are clear that the appeal must fail on the merits.

2. The District Judge has found that there was no exclusion within the meaning of Article 127. The appellant argues on the authority of Ramachandra Narayan v. Narayan Mahadev I.L.R. (1886) B. 216 that exclusion should be presumed from the possession of defendants Nos. 1 to 4. We do not think the observations of West J. have been accepted as a sound interpretation of Article 127 in this Court. Sellam v. Chellammal I.L.R. (1901) 24 M. 441 and Doorjeti Subbayya v. Doorjeti Venkayya I.L.R. (1906) M. 201 clearly lay down that mere non-participation is not exclusion. The decree, therefore, in the plaintiffs' favour is right. We dismiss the second appeal with costs.

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