

Vaithilinga Mudaliar and ors. Vs. Srirangathanni and ors.

Vaithilinga Mudaliar and ors. Vs. Srirangathanni and ors.

SooperKanoon Citation : sooperkanoon.com/785837

Court : Chennai

Decided On : Oct-22-1918

Reported in : (1919)36MLJ119

Appellant : Vaithilinga Mudaliar and ors.

Respondent : Srirangathanni and ors.

Judgement :

ORDER

1. In this case the plaintiffs sued as next reversioners on the death of the widow of the alleged last male holder, and joined various defendants who were in possession of properties which, they alleged, formed part of the estate of the last, male owner. These were really different causes of action against the defendants, but they were allowed, according to a well established practice, to be joined in the same suit. The Subordinate Judge passed a decree in favour of the plaintiffs against the alienees of the several items of property. These alienees and the other defendants filed separate appeals in the High Court, and the appeals of some of the defendants alienees were allowed on the ground that the items in question were not shown to have formed part of the estate of the last male owner. Although several separate appeals were filed, in accordance with Rule 105 of the Civil Rules of Practice only one appellate decree was drawn up. Some of the appeals of the defendants-alienees which were allowed by us relate to items of property which are said to be of less value than Rs. 10,000, and it is objected by these defendants as respondents to the petitions that, in these circumstances, the

petitioners are not entitled to a certificate under Section 110, Civil Procedure Code. We think that the fact that only one appellate decree was drawn up in all these appeals cannot affect the rights either of the appellants or the respondents in those appeals with reference to a further appeal to His Majesty in Council, and that the applications must be considered as if a separate decree had been passed in each appeal. Otherwise, the effect of the Civil Rules of Practice would be to interfere with the right of appeal or the right to retain the judgment of this Court without appeal, both very valuable substantive rights as has often been pointed out. This is a matter with which we have no power to interfere by means of the Civil Rules of Practice. There is an affidavit by one Srinivasa Iyer stating that the value of the subject-matter of appeal No. 12 of 1909 in this Court, filed on behalf of the 36th to 38th defendants, is less than Rs. 10,000 and there is no counter-affidavit. No leave therefore can be granted to appeal from the decree in that appeal. There is a contest as regards appeal No. 11 of 1909 in this Court as to whether the subject-matter of the suit is of the value of Rs. 10,000 or not, but having regard to the description of the land, we are quite satisfied that its value exceeds Rs. 10,000 and see no reason to call for a report. We accept the affidavit by one Sambasiva Aiyar filed on behalf the Petitioners in C.M.P. 2389 of 1917 in that appeal. As regards the appeal against appeal No. 10 of 1909 (C.M.P. No. 1761 of 1917) we are prepared to certify that there is a substantial question of law. As regards appeal No. 14 of 1909 the petitioners desire to question the principles laid down in *Dharmapuram Pandara Sannadhi v. Virapandian* (1898) 1 L.R. 22 M. 302 and we are prepared to certify that this appeal involves substantial questions of law. In the other appeals also, we certify that there are substantial questions of law. As regards respondents Nos. 19 to 21 in C.M.P. No. 2389 of 1917 (i.e., against Appeal No. 12 of 1909) the petition is dismissed with costs. As regards the same respondents i.e., respondents Nos. 11-13 in (C.M.P. No. 2705 of 1917 (i.e., against Appeal No. 12 of 1909) the petition will be dismissed, but there will be no costs. In the petitions in which leave has been granted, costs will be costs in the cause. There will be only one printing in C.M.P. Nos. 2389, 2705 and 1761 of 1917.