

**Sankararamier and anr. Vs. Subramania Aiyar and ors.**

**LegalCrystal Citation :** [legalcrystal.com/776524](http://legalcrystal.com/776524)

**Court :** Chennai

**Decided On :** Jul-27-1903

**Reported in :** (1903)13MLJ425

**Appellant :** Sankararamier and anr.

**Respondent :** Subramania Aiyar and ors.

**Judgement :**

1. The decision appealed from appears to be in direct conflict with the decision of the Full Bench case in Ratnam, v. Papa 13 M.L.J. R 292. where it was held that the evidence referred to in Section 409 of the Civil Procedure Code is confined to evidence in proof or disproof of the pauperism of the applicant and 'not evidence as to the merits of the case.' That decision is contrary to the decisions in Kamrakh Nath v. Sunder Nath I.L.R. 20 A. 299 and Vijindra Thirtha Swami v. Sudhindra Thirtha Swami I.L.R. 19 M. 199 and adopts the ruling in K. Ranganayaki Ammal v. K. Venkatachellapati Nayudu I.L.R. 4 M 323. In this case the Judge ordered further particulars to be given of the fraud alleged in the plaint after having heard the parties under Section 409 and finally dismissed the petition because he held that after the petition had been amended by the entry of the particulars ordered it was not more explicit than the original petition had been.

2. We think that where the petition contains sufficient particulars to show a cause of action as in this case, no further particulars can be required under Section 409 though after leave to sue as a pauper has been given under that section relative to further particulars in the Code are applicable to a pauper suit as much as to any other. The case of the 2nd petitioner stands on even a strong position. As a member of the family at the time of the partition and not actually a party to it he would be entitled to his share in all the family property unless his father's deed appears to be binding on him.

3. The procedure adopted by the District Judge was irregular, and materially affected the merits of the case. We set aside the order of the learned Judge as well as of the District Judge, and we direct that the application be granted and dealt with under Section 410.

4. The costs throughout shall be costs in the cause.