

Madras High Court

Chellammal And Ors. vs Aiyamperumal Kudumban And Ors. on 27 April, 1936

Equivalent citations: AIR 1937 Mad 495

Author: V Rao

ORDER Venkatasubba Rao, J.

1. (14th February 1934.) The plaintiffs are Indian Christians and they attacked in this suit the decree obtained against them in O.S. No. 243 of 1923 on the file of the Tuticorin Munsif's Court (same as O.S. No. 91 of 1924 on the file of the Srivikuntam Munsif's Court) by defendants 1 to 3. The decree is attacked on two grounds: First, that it was obtained by the fraud of defendants 1 to 4 and secondly, that there was gross negligence on the part of defendant 7, the plaintiff's mother. Although the relief claimed is a declaration that the decree in the former action is not binding, the suit may be treated as one brought to set aside that decree. There is also a prayer for an injunction to restrain defendants 1 to 4 from executing that decree.

2. The learned District Munsif rightly points out that several relevant documents have not been filed, and this has been responsible for a great deal of inconvenience that has arisen. The facts, so far as I have been able to gather them, may be shortly stated. The suit property belonged to defendant 5 and he created a mortgage over it in 1903 in favour of a nidhi of which defendant 4 was the secretary. That mortgage was assigned by defendant 4 in favour of Perumpadia Kudumban, the father of defendants 1 to 4. In 1916 defendant 5 sold the property to Nanmai Alwar Nadar, the father of the plaintiffs (Ex. D). Perumpadia filed O.S. No. 111 of 1918 against defendant 5 and his son defendant 6 to enforce the mortgage of 1903. To that suit Nanmai Alwar Nadar was not impleaded as defendant: this nonjoinder of the purchaser of the equity of redemption is the origin of the litigation that has ensued. To return to O.S. No. 111 of 1918, the District Munsif decreed that suit. Defendants 5 and 6 filed an appeal and the Subordinate Judge reversed the trial Court's decree. Perumpadia then filed S.A. No. 965 of 1919, the respondents to that appeal being the present defendants 5 and 6. On 3rd March 1920, Sadasiva Iyer and Spencer, JJ. set aside the appellate Court's decision and restored the decree of the District Munsif granting a mortgage decree. Perumpadia executed that decree and himself purchased the mortgaged property. When he tried to take possession, he was resisted by Nanmai Alwar Nadar. There was a re-inquiry Under Order 21, Rule 99, Civil P.C., and Perumpadia's application for possession was dismissed. To set aside the order of dismissal, the suit already referred to, O.S. No. 243 of 1923, was filed Under Order 21, Rule 103, by Perumpadia's sons, the present defendants 1 to 3. That suit was brought against the present plaintiffs, Nanmai Alwar Nadar having apparently died in the meantime. The present action as I have said is brought for the purpose of getting rid of the decree in O.S. No. 243 of 1923. The plaintiffs as already stated complain that the decree was procured by the fraud of defendants 1 to 4 and also that their mother, defendant 7, was guilty of gross negligence. (I must observe that plaintiff, it is said, was a major even at the time of the previous suit). The records of O.S. No. 243 of 1923 have not been filed, but that suit seems to have been decreed on 21st March 1925. Whether the previous suit (O.S. No. 243 of 1923) was brought only for a declaration or whether possession also was prayed for, does not appear. However Ex. 1, dated 14th March 1926, shows that in execution of the decree in that suit, defendant 4 on behalf of defendants 1 to 3 obtained delivery of the property. Subsequently, it appears at some time--the date is not given--the property was conveyed by defendants 1 to 3 to

defendant 4. This suit was commenced on 1st July 1926, and the arguments have proceeded on the assumption that defendant 4 had by then become the purchaser.

3. The District Munsif has found that no fraud has been made out but that gross negligence on the part of defendant 7 has been proved; but on the ground that possession should have been asked for as 'further relief' Under Section 42, Specific Relief Act, he has dismissed the suit. On this point the learned Subordinate Judge, agreeing with the Munsif, has held that the suit was properly dismissed; but on the questions regarding fraud and gross negligence, he has given no findings.

4. In my view the decision of the lower Court is wrong. 'Further relief in Section 42 does not mean every kind of relief that may be prayed for; what is contemplated is a relief arising from the cause of action on which the plaintiff's suit is based: *Kanni Ammal v. Sankar Krishnamurthy* AIR 1919 Mad 956. If the plaintiff by reason of the declaration he seeks and obtains, becomes entitled in some remote way to other reliefs, they are not so related to his cause of action, as to be properly termed 'further reliefs' within the meaning of the section. I do not think that this suit should fail on account of the fact that possession has not been prayed for. If the plaintiffs succeed in obtaining the reliefs they now seek, the former suit, O.S. No. 91 of 1924, will be revived and must be proceeded with. If they ultimately fail in that suit, they will not be entitled to possession by way of restitution. Moreover, the situation is complicated by the fact that possession has passed to defendant 4 who subsequent to the Court-sale, brought the property from the decree-holders (i.e., the Court auction purchasers) and so far as he is concerned, as regards obtaining possession, other questions may arise, such as his bona fides. I think it would be outside the scope of the present suit to raise questions of this sort, and I am, therefore, of the opinion that the decision of the lower Courts that the suit fails by reason of Section 42 is wrong.

5. The judgment of the lower appellate Court is set aside and I remit the case to that Court with a direction that the appeal shall be re-heard and findings shall be submitted, on the evidence already in the record, on the questions of fraud and gross negligence. For the guidance of the lower Court, I may refer to my observations in *Shanmuga Mudaliar v. Kaveri Ammal* AIR 1928 Mad 708. The findings shall be submitted in one month from the receipt by the lower Court of this order. Time for objections, if any, is ten days. (On receipt of the findings, the High Court delivered the final judgment on 27th April 1936 allowing the second appeal.)