
(1958) 04 AP CK 0026
In the Andhra Pradesh High Court
Case No : A.A.O. No. 157 of 1954

Adapa Katamaswamy

APPELLANT

Vs

Pulapaka Rayya Pantulu and others

RESPONDENT

Date of Decision : 10-04-1958

Acts Referred:

Court Fees Act, 1870 — Section 7, 7(xi)(cc)

Citation : AIR 1958 AP 755

Hon'ble Judges : Umamaheswaram, J

Bench : Single Bench

Advocate : N. Bapi Raju, for the Appellant; P. Somasundaram (sic).
Suryanarayana, for the Respondent

Judgement

Umamaheswaram, J.—This appeal is filed as against the of the Subordinate Judge of Kakinada, remand (sic)e suit to the District Munsif's Court, Peddapu(sic) and directing the District Munsif to try issues 3 (sic) The main contention of Sri N. Bapiraju, the (sic)d Advocate for the appellant, is that as the plaintiff-respondent has failed to make out that the defendant is his tenant and that the 2nd defendant's a sub-tenant, the appeal ought to have been (sic)sed and that no opportunity ought to have given to the plaintiff to make out his title to property.

2. On the question as to whether the title of the (sic)ff might be gone into or not when he fails to (sic)sh the relationship of landlord and the tenant, are three Bench decisions of the Madras High In the earliest decision in Balasidhantam v. (sic)al Chetti, 27 Mad LJ 475 : (AIR 1915 Mad (A), the learned Judges held that if the suit was (sic)t under S. 7, CI. XI (cc) of the Court Fees Act, (sic)e of the plaintiffs need not be gone into. They held that it was not open to the Court in appro(sic) cases to go into the question of title. The head (sic) however wrongly worded, and it says that the cannot go into title and give a decree on that The next Bench decision of the Madras High (sic)s that reported in Chennavaraswamy v. Chinna narayana Murthy, 21 Ind Cas 560 (B). On the (sic)f the particular case,

the learned Judge held (sic) the Subordinate Judge gave satisfactory rea(sic)r refusing to go into the question of title, (sic)ere not prepared to interfere with his discretion. The last Bench decision to be referred to is the decision in Ponniah Pillai and Others Vs. Pannai, Sivanupandia Thevar through his Brother and Guardian, R.K. Viswanatha Thevar, . Wadsworth, Officiating Chief Justice, delivering the judgment of the Bench, followed the Full Bench decision of the Allahabad High Court in Balmukund v. Dalu, ILR 25 All 498 (FB) (D), holding that even if the suit based on the relationship of landlord and tenant failed, a decree might be based on the plaintiff's title.

The learned Judge pointed out that the head note in 27 Mad LJ 475 Balasidhantam and Others Vs. Perumal Chetti, and Others, was incorrect and that the Calcutta High Court in Govinda Kumar Sur and Others Vs. Mohini Mohan Sen and Others, proceeded on the basis of the wrong head-note and not on the basis of the actual decision. In my opinion, this Bench decision lays down the correct principle, and I am also bound by that judgment.

3. My attention was drawn to two decisions of Single Judges of the Madras High Court, reported in In Re: Annadhana Katlai attached to Sri Thiagarajaswami Devasthanam, and K. Gopalu Mudali Vs. A. Venkatesu Mudali and Others, There are no doubt observations in those decisions to the effect that the plea based on title could not be gone into if the suit based on the relationship of landlord and tenant fails. Those decisions do not refer to the Bench Decision of the Madras High Court in Ponniah Pillai and Others Vs. Pannai, Sivanupandia Thevar through his Brother and Guardian, R.K. Viswanatha Thevar, . The observations of Chandra Reddy J., (as he then was) in In Re: Annadhana Katlai attached to Sri Thiagarajaswami Devasthanam, are as follows:

In a suit for ejectment under S. 7 (xi) (cc) a prayer for declaration of title is outside its scope. The plaintiff either succeeds or fails on his case of tenancy. He cannot fall back upon the plea based on his title when he finds that he cannot succeed in establishing the tenancy set up by him in the plaint If he fails in his attempt to prove that the defendant got into possession of the property by virtue of the leases he runs the risk of the suit being dismissed.

Similar are the observations of Mack, J. in 1953 1 Mad LJ 147 : K. Gopalu Mudali Vs. A. Venkatesu Mudali and Others, and the observations of the Hyderabad High Court in Mohd. Abdullah v. Saleha Bi, AIR 1953 Hyd 234 (H). As those observations run counter to the Bench decision of the Madras High Court reported in ILR 1947 1 Mad 671 : Ponniah Pillai and Others Vs. Pannai, Sivanupandia Thevar through his Brother and Guardian, R.K. Viswanatha Thevar, I respectfully dissent from them and follow the Bench decision in Ponniah Pillai and Others Vs. Pannai, Sivanupandia Thevar through his Brother and Guardian, R.K. Viswanatha Thevar,

4. The next question that has to be decided in this case is as to whether the Subordinate Judge exercised his discretion rightly in directing the District Munsif

to decide that question of title. Though the suit was based on the relationship of landlord and tenant, the question of title was put in issue and evidence was adduced by both the parties on that question. In the circumstances, the Subordinate Judge acted rightly in directing Issues 3 to 7 to be determined by him. Sri Bapiraju, the learned Advocate for the appellant, pointed out that the additional issue will also have to be determined by him. I agree with his contention and direct that all issues other than issues 1 and 2 might be determined by the District Munsif. I confirm the order of remand and dismiss the appeal with costs.

5. So far as the memorandum of cross-objections are concerned, viz.; that no opportunity ought to have been given to the parties to adduce further evidence, I am inclined to think that there is no substance. The memorandum of cross-objections also fails and it is dismissed with costs.