

(1890) 12 MAD CK 0006
In the Madras High Court

Ara Pidikayil Bikutti

APPELLANT

Vs

Puthen Purayil Thottathil Kalendan and Others

RESPONDENT

Date of Decision : 18-12-1890

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : (1896) 6 MLJ 240

Judgement

1. This is a suit brought by the.; junior members " of a Malabar Tarward in respect of land alleged to have been alienated to some of the

defendants. " The plaint states that after the death of :the late Karnavan Cheria Kunhammad, the 1st and "2nd defendants executed a deed of gift

in favour of the other defendants, including the name of the late Karnavan as an executant. It charges that the 1st and 2nd defendants, of whom one

is the present"" Karnavan, are not authorized to make such a gift, and concludes with a prayer for the cancellation or the deed of gift and the

surrender of the land given to the plaintiffs or to the. 1st defendant , on behalf of the Tarward.

2. The District Munsif who tried the suit dismissed it on the merits, and the plaintiff appealed. On the appeal, in order to save Court fee stamp, he

abandoned the prayer for possession, but insist ed on his right to have the other relief prayed for" in the plaint-; and it is against the decree

accordingly made in his favour by the Subordinate Judge that the 3rd defendant now appeals. In the opinion of the Subordinate Judge, it was

competent to him to grant such"a decree, because the relief prayed for was not of a declaratory nature, and because the plaintiff being an

Anandravan was, not entitled to maintain a suit for possession.

3. At the hearing, before us, it was argued that a suit for possession would not lie under the circumstances, and that therefore "whether or not the relief claimed was of a declaratory nature, the suit was maintainable. We are unable to accede to this contention, ½The prayer is for the surrender of the land to the plaintiff or to the 1st defendant on behalf of the Tarward. According to the case of the plaintiff, the land being in the hands of strangers, it was clearly the right of the plaintiff, as of other members of the Tarward, to have the land restored to the possession of the Tarward. Obviously, this right could not be enforced by the 1st defendant in the face of his own deed, and therefore the objection which may generally be raised to a suit for possession by an Anandravan was not applicable. Except at the suit of a junior member, ? the Tarward's right could not be asserted and enforced. Under these circumstances we are of opinion that it was competent to the plaintiff to maintain the suit for possession, as framed in his plaint. The question then arises whether, it being open to the plaintiff to sue for possession, he was at liberty to restrict himself to the other kind of relief claimed in the plaint. We agree with the Subordinate Judge that the plaint does not ask for a declaration, though we must observe that the Subordinate Judge has framed the decree, as if that had been the nature of the prayer of the plaint. But are the circumstances stated in the plaint such as to justify a prayer for the cancellation of the instrument of gift? It was argued that the alleged forgery of the late Karnavan's signature necessitated a cancellation of the instrument, and that the case was therefore distinguishable from that in which a declaration has been sought for by Anandravans impeaching the alienations of their Karnavans,. In, DUE judgment, however, it is clear that the factum of the gift is admitted, and the alleged forgery.; is not the ground on which relief is sought. The substantial charge made in the plaint is, that .he 1st and 2nd defendants have, Without authority, made a gift of Tarward property, and if that charge is made out, it is a declaration of the. Tarward's right, and not a cancellation of the instrument of gift, that should be granted.

4. This being so, :it must follow, that the suit, as framed by the plaintiff on the appeal is not maintainable. The relief in the share of cancellation of the deed could only have been . granted in the form of a declaration, in the form indeed, in which it has been [281] granted, and as such auxiliary to the

principal relief by way of delivery of possession. It would be a mere evasion of the provision of Section 42 of the Specific Relief Act to allow the

suit in its maimed form to be maintained. We must therefore reverse the decree of the Subordinate Judge, and restore that of the District Munsiff.

Respon-dents to pay coats here and in, the Lower Appellate Court.