

(1914) 02 MAD CK 0041
In the Madras High Court

Athalur Malakondiah

APPELLANT

Vs

Thatha Lakshminarasimhalu Chetty

RESPONDENT

Date of Decision : 09-02-1914

Acts Referred:

Citation : AIR 1914 Mad 646 : (1914) 1 LW 372 : (1914) 26 MLJ 312

Hon'ble Judges : Oldfield, J; Charles Arnold White, J

Bench : Full Bench

Judgement

Charles Arnold White, Kt., C.J.—This is an appeal from a decree dismissing a suit brought by a party who was a legatee and annuitant under the will of a deceased person of which the defendant was the executor. It is contended on behalf of the appellant that it was obligatory on the learned Judge to proceed with the case and to hear the evidence and that the plaintiff if the allegations in the plaint were established, was entitled to claim, as of right, a general administration decree. A written statement was put in and, after the written statement; the defendant paid into court the amount of the legacy and a sum sufficient to secure the payment of the annuity. I think the learned Judge had a discretion to adopt the course which he took. See Halsbury's Laws of England Vol. XIV, paragraph 798 and the cases which are there cited. No doubt the cases cited are instances where the Court has acted under Order 55, Rule 10 of the Rules of the Supreme Court of England. But with the exception of one case we have not been referred to any authorities which show that any alteration of the substantive rights of parties either in law or in equity was affected by the rule in question, a rule which enabled a party to apply for the administration of the estate of a deceased person by originating summons instead by the suit. It seems to me if the rule purported to affect the substantive rights of parties, it would be beyond the power of the rule-making authority. In view of the pleadings in this case and having regard to the payment into Court to which I have referred, I am not prepared to say that the learned Judge exercised a discretion, which I think he had, wrongly when he dismissed the suit. We have been referred by the learned vakil for the appellant to the case of *Wollaston v. Wollaston* (1877) 7 Ch. D. 58.

There the question before the Court was whether the annuitant under the will in question was entitled to have a judgment for administration of the estate and it was held that he was. The argument turned on whether the annuitant qua annuitant was entitled to a judgment for administration,

2. It seems clear that under the English practice where one creditor sues on behalf of others for the administration of the estate of a deceased person the defendant may at any time before judgment have the action dismissed on payment of the plaintiffs debts and all the costs of the action. See Daniel's Chancery Practice, edition 7, Vol. I, page 195 and the cases there cited. It has been pointed out that that was a case of a creditor's suit and the case now before us is a suit by a legatee and annuitant. But for the purposes of the question whether there is discretion in the learned Judge I do not think any distinction can be drawn between suits by creditors and suits by legatees. As has been pointed out in the course of argument, in view of the payment into Court which has been made, the only question that would remain, if we follow the English practice, would be the question of costs. Our attention has been called to a case which, Mr. Srinivasa Aiyanger contended, showed that there was no discretion in the court. He contended that the discretion, in England at any rate was given by Order 55, Rule 10 and that prior to the introduction of that rule there was a discretion. The case to which he referred is Campbell V. Gillespie (1900) 1 Ch. 225. That was a case in which a creditor sued the trustee under a deed for the benefit of creditors charging him with fraud and misconduct and claiming an account of all his dealings under the trust deed. No doubt the learned Judge in that case observed that under the old law the plaintiff would have been entitled as a matter of right, to a common account against the defendant but under Order 55, Rule 10 the Court had a discretion. I do not think the observations of the learned Judge, with reference to the particular facts of this case require us to hold that in a case like the present there is no discretion in the Court. In regard to costs the order dismissing the suit on the pleadings was an order made by the learned Judge in the exercise of a discretion which I think he was entitled to exercise. This being so, I do not think his order as to costs should be disturbed.

3. The appeal fails and is dismissed with costs.

Oldfield, J.

4. I agree.