

(1924) 02 MAD CK 0063
In the Madras High Court

Cheriakkatavan Koran

APPELLANT

Vs

Putham Veetil Ponmileri Korothe Ammalu and Others

RESPONDENT

Date of Decision : 18-02-1924

Acts Referred:

Citation : AIR 1925 Mad 1025 : 85 Ind. Cas. 562

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The lower appellate Court has found that Ex. III is binding on the plaintiffs. It was executed by the 1st defendant in favour of the 2nd defendant and the plaintiffs, and the latter cannot be heard to say that the 2nd defendant on the date of Ex. III had no right to the property. The question, however, whether the 2nd defendant was entitled to the property on the date of Ex. III is now immaterial, because subsequent to it the right of the plaintiffs to manage the property was recognised in a suit to which the plaintiffs and the 2nd defendant were parties. The plaintiffs had filed O.S. No. 649 of 1911 for recovery of rent against a third party and to that suit the 2nd defendant was made a party. The suit related to the property which is the subject-matter of the present action. The plaintiffs claimed that it had been bequeathed to them as sriswath by their mother and that the 1st plaintiff was constituted the manager. The defendant (tenant) pleaded that he had obtained a renewal from the 2nd defendant who, by the way, was also 2nd defendant in that suit; and the following issues were raised:

1. Whether the renewal and payment set up are true and binding on the plaintiffs?
2. Whether the 2nd defendant has a right under the Will to collect the rent and grant the renewal?
2. The 2nd defendant was ex parte. The Court gave the following judgment:

It is to be noted that under the will the females are to manage and not the

males. No doubt the will cannot legally impress on the property the character of what is called sriswath * * * The 2nd defendant has no right to manage.

3. It will be seen that the issue relating to the right to manage was raised and that a finding was given. The decision of that question was necessary for the decision of the point in controversy between the parties. Although, therefore, the 2nd defendant was ex parte, the finding would operate as res judicata as between the plaintiffs and the 2nd defendant. Vide Hara Chandra Bairagi v. Bepin Behari Das (1910) 13 C.L.J. 38 and Raj Kumar Roy Chowdhury v. Ali Muddi 17 C.W.N. 627.

4. The learned Subordinate Judge has decided that the previous adjudication is res judicata even as against the 1st defendant. In this view he is not correct. But his view may be supported on another ground. The 1st defendant is merely a tenant, and is not interested in the dispute between the plaintiffs and the 2nd defendant inter se relating to the management of the property. In a proceeding to which the plaintiffs and the 2nd defendant were parties, the right of the former as against the latter was recognised. If the previous suit had been one expressly instituted for the purpose of obtaining a decision in regard to the rival claims set up by the plaintiffs and the 2nd defendant the judgment obtained by the plaintiffs might be just as conclusive evidence of their right as a conveyance to them by the opposite party would be. This is the principle recognised in Secretary of State v. Syed Ahmed Badsha Sahib AIR 1921 Mad. 248. The nature of the previous suit is, however, some what different, but I think, in the circumstances, the same rule may be applied and the 1st defendant will thus be bound by the result of the previous litigation.

5. The appellant's learned vakil contended that the plaintiffs having come to Court with a specific case founded on Ex. A ought not to be permitted to obtain a decree on the footing of Ex. III. I do not think any useful purpose will be served by prolonging this litigation and compelling the plaintiffs to file a fresh suit. There is no substance in the contention that there is no allegation in the plaint that the plaintiffs determined the tenancy by a proper notice because the 1st defendant does not profess to rest his case on Ex. III and claim that he is holding over; but, on the contrary, he has set up a fresh lease, Ex. II, which the Subordinate Judge has found not to be binding on the plaintiffs.

6. Lastly an argument was advanced in regard to the construction of Ex. III. It was contended that chira which is a part of item (1), is held under it for a period of 12 years. There is no justification for this contention under the terms of the document.

7. In the result the second appeal fails and is dismissed with costs.