

**(1925) 04 MAD CK 0006**  
**In the Madras High Court**

Chockalingam Pillai and Another

APPELLANT

Vs

P.K.P.S. Pichappa Chettiar

RESPONDENT

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**Date of Decision :** 03-04-1925

**Acts Referred:**

**Citation :** AIR 1926 Mad 155 : 92 Ind. Cas. 599 : (1925) 22 LW 579

**Hon'ble Judges :** Victor Murray Coutts Trotter, C.J.;Wallace, J

**Bench :** Division Bench

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## **Judgement**

1. This appeal is against the order of the Additional Subordinate Judge of Ramnad at Madura appointing a Receiver in respect of the schedule

properties in the suit which, according to the plaintiff's case, the defendants Nos. 1 to 3 had contracted to sell to him, and of the B schedule

properties in the plaint which, according to the plaintiff, the defendants Nos. 1 to 3 had agreed to mortgage to him by simple mortgage. The suit is

a suit for specific performance inter alia of this contract to sell and to execute a simple mortgage. Mr. T.R. Ramachandrier for the appellant

contends that at any rate so far as the B schedule properties are concerned, it is not open to the lower Court to appoint a Receiver, the point being

that the lower Court cannot by way of receivership do what it would not be entitled to do even by way of decree. At the highest, the plaintiff is,

entitled if he succeeds only to a simple mortgage on these properties, and having obtained this simple mortgage he could not immediately sue for

possession. He is not entitled on the simple mortgage to possession. The most he could do is to enforce a sale on foot of the mortgage. We think

that this argument is sound and that the lower Court was not justified in appointing a Receiver so far as the B schedule properties are concerned.

2. So far as the A schedule properties are concerned, Mr. T.R. Ramchandrier has also argued that the lower Court has exercised its discretion

improperly in appointing a Receiver in respect of properties of which the plaintiff, in the first instance at least, is only asking for specific

performance of sale and not for possession. Subsequently, however, the plaintiff was allowed to amend his plaint and put forward a prayer for

possession of these properties also. A civil revision petition has been filed here against this amendment of the plaint and we deal with this now.

Various rulings of this Court have been quoted to us, as also Form 47 of the First Schedule to the C.P.C., which set out that it is open to the Court

in a suit for specific performance of sale, also to give a decree for possession. We are not, therefore, prepared to say that the lower Court

exercised its discretion wrongly in permitting the amendment of the plaint and allowing the plaintiff to add a prayer, for possession of the A

schedule properties. That being so, the plaintiffs prayer for possession will stand, and in these circumstances we do not think we can say the lower,

Court exercised its discretion wrongly when it appointed a Receiver in respect of those properties, a decree for possession of which the plaintiff

would be entitled to if he succeeds.

3. In these circumstances we dismiss C.R.P. No. 208 of 1925. No order as to costs.

4. As regards C.M.A. No. 109 the lower Court's order is set aside so far as the B schedule properties are concerned and the Receiver, if he has

taken over charge of these properties must be discharged of it. No order as to costs.