
(1890) 08 MAD CK 0013
In the Madras High Court

Chomu

APPELLANT

Vs

Umma and Others

RESPONDENT

Date of Decision : 05-08-1890

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : (1891) ILR (Mad) 46

Hon'ble Judges : Weir, J; Arthur J.H. Collins, J

Bench : Division Bench

Judgement

1. On behalf of the respondents, it is objected that, as the plaintiff might have sued for further relief, she is not entitled, with reference to Section 42 of the Specific Relief Act, to maintain the present suit for a mere declaration.
2. Assuming, for the moment, that the plaintiff was able and called upon in this case to ask for further relief, we are of opinion, following the decision of the Bombay High Court in Limba Bin Krishna v, Rama Bin Pimplu ILR 13 Bom. 548, that the suit should not at the present stage be dismissed on this ground, the objection not having been raised in either of the Lower Courts.
3. We are of opinion, however, having regard to the circumstances of this case that the relief sought for by way of declaration was sufficient, and that it was not necessary for the plaintiff to ask for any further relief in the suit.
3. The objections on this ground accordingly fail.
4. The suit for a declaration being, for the reasons stated, maintainable, we are of opinion "that the Subordinate Judge has erred in taking the value of the share of the jenm to have been fixed for the purposes of such a claim as that now advanced by the covenant between the plaintiff's husband and the mortgagee in 1872 (Exhibit I). The value of the one-quarter share then fixed was fixed for a specific purpose, viz., the purpose of conditional sale then contemplated by the parties to that exhibit. The transaction contemplated is one which for reasons which need not be entered on the Courts refuse to enforce, and the object for

which the valuation was made being therefore ineffectual even for the purposes contemplated by the parties, the party to the instrument cannot be held to be bound by that valuation, when a question actually arises in a suit properly brought as to what is the actual value of this share. In the present case the land to which the mortgage attached has been taken up under the Land Acquisition Act, and the property no longer exists in the shape in which it did at the time of the proposed conditional sale, but has been converted into money. The value of the entire property, of which plaintiff claims one-quarter share, has been realized in the shape of money, Rs. 3,735, and the plaintiff, if entitled at all, is, we think, clearly entitled to her proportionate share, viz., one quarter of this amount less the necessary deductions for kanom, interest, &c.

5. These deductions may be fixed as follows:

Rs. Kanom 200 Interest at 12 per cent, up to 30th November 1874
60 Interest approximately up to date at 6 per cent. ... 192 _____ Total .. 452

_____ 6. This amount being deducted from Rs. 933-15-2, the one-quarter amount of the proceeds of the land, the value remaining is Rs. 481-15-2, and, in respect of this sum, the plaintiff is, we hold, entitled to the declaration prayed for. We accordingly reverse the judgments of the Lower Appellate Court and of the District Munsif and give a decree for the plaintiff in the terms above stated. Plaintiff is entitled to her costs throughout this suit. The defendants will bear their costs throughout.