
(1941) 08 MAD CK 0038
In the Madras High Court

Dukka Gangayya and Another

APPELLANT

Vs

Buddepu Lakshmi Devi

RESPONDENT

Date of Decision : 05-08-1941

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 488

Citation : AIR 1942 Mad 93 : (1941) 54 LW 362 : (1941) 2 MLJ 510

Hon'ble Judges : Abdur Rahman, J

Bench : Division Bench

Judgement

Abdur Rahman, J.—The facts which led to the institution of the two connected suits out of which the present appeals have arisen are simple

and may be briefly narrated. The respondent obtained an order u/s 488 of the Criminal Procedure Code for maintenance against her husband in

M. C. No. 97 of 1933 in the Court of the Joint Magistrate of Berhampur. She got certain quantities of paddy attached in execution of the order

passed by that Court. After attachment the paddy was stored in two pits. It was subsequently sold by the Magistrate and the sale proceeds are

lying in that Court. The plaintiff in O.S. No. 201 of 1936 is the second wife of the respondent's husband, the plaintiff in the other suit being (her)

maternal uncle. Both of them set up a claim to the whole of the paddy attached by the Magistrate but their claim petitions were rejected. They

consequently brought the two suits. These suits were for the recovery of money either from the Magistrate's Court or from the respondent in the

event of the money having been paid by the Magistrate to her (who was the petitioner in M.C. No. 97 of 1933). These suits were dismissed by the

District Munsif of Sompeta on the ground that the plaintiffs had failed to establish their title. The objection that the suits were not maintainable in

their present form was, however, overruled by that Court. On appeal the Subordinate Judge of Chicacole did not go into the question of title but

dismissed the appeals on the ground that the suits were not competent as the Secretary of State had not been impleaded as a party to the present

suits. In dismissing the appeals on that ground he relied on a decision in *The Secretary of State for India in Council v. Jagat Mohini Dassi* I.L.R.

(1901) Cal. 540. The plaintiffs had consequently preferred the present appeals which may be disposed of by one judgment.

2. The contention advanced on behalf of the respondent is that the plaintiffs should have asked for a declaration to the effect that the order passed

in the claim proceedings was incorrect and should be set aside. Since, it is contended, the suits are not for declaration, they are not competent. It is

contended in the alternative that in so far as money was lying in the Court of the Joint Magistrate and as long as that money was not paid, it was or

must be deemed to be at the disposal of the Secretary of State, and the latter, that is, the Secretary of State should have been made a party to the

suits.

3. There is no force, in my opinion, in either of these contentions. No rules have been framed by the Local Government u/s 386 of the Code of

Criminal Procedure and it is therefore urged that the provisions of Section 88 of that Code must be held to be applicable. But even if that

contention is assumed to be correct it would not help the respondent. There is a distinct provision in Section 88, Clause 6 (d) which entitles a party

whose claim or petition has been disallowed in whole or in part to go and institute a suit to establish the right which he claims against the property in

dispute and that is exactly what the plaintiffs in both the suits are trying to do. The mere fact that on account of the sale of the paddy, they have

asked for a decree for money instead of a declaration does not take these suits out of the category of the suits contemplated by Section 88 Clause

6(d) of the Criminal Procedure Code. It must not be overlooked that the money which has been realised although capable of being realised as fine

u/s 488 Clause (3) is not in fact a fine itself and is not being held by or at the disposal of the Government for its own purposes, but with the object

of paying maintenance to the person in whose favour the order was passed. The Government cannot and does not lay any claim to any portion of

the money thus realised. It is therefore futile to argue that the Secretary of State was interested in the decision whether the property attached at the instance of the respondent belonged to her, and should have been for that reason impleaded. The only party who is interested in the result is tile respondent and the suit was instituted against her. There is therefore no force in the contention that the suit should have been against the Secretary of State and since the Secretary of State was not impleaded as defendant, is not maintainable.

4. I cannot understand the ground on which the lower appellate Court dismissed the plaintiff's suits. The decision in the Secretary of State for India in Council v. Jagat Mohini Dassi (1901) 28 Cal. 540 had absolutely no application to the facts of the present case. As for the contention that the suits should have been for declaration the answer is simple. First of all the paddy-having been converted into money, the relief that should have been and is being claimed on behalf of the plaintiff, is for that money itself. But conceding for the sake of argument that the contention of the learned Counsel for the respondent is correct all the necessary facts have been given in the plaint and it is the duty of the Court to grant the relief to which a party is found entitled even if it has not been by a mistake asked for by the party.

5. Both these contentions therefore fail. The appeals must consequently be accepted and the suits sent back to the lower appellate Court for disposal of the appeals on their merits. It is unfortunate that the lower appellate Court did not go into the question of title at the same time. Had that been done a further delay would have been avoided. The costs in these appeals both in this and the lower appellate Court will be costs in the cause.

6. The court-fees in these appeals may be refunded to the appellants.