
(1948) 02 MAD CK 0015
In the Madras High Court

Ellappa Naicken

APPELLANT

Vs

K. Lakshmana Naicken (dead) and Others

RESPONDENT

Date of Decision : 20-02-1948

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1948) 61 LW 365 : (1948) 1 MLJ 383

Hon'ble Judges : Govinda Menon, J

Bench : Division Bench

Judgement

Govinda Menon, J.—This is an application to revise the order of the Sub-Divisional Magistrate of Karur dated the 30th November, 1946, by which he refused to direct the handing over of the Immovable property in dispute between the parties, on the ground that the petitioner before him was not entitled to the possession of the properties because he has not got an order from a competent Court determining his rights or that he was entitled to possession thereof. Proceedings u/s 145 of the Code of Criminal Procedure had been initiated and were pending between the parties in 1941 and finally on the 20th February, 1942, the Joint Magistrate, Karur, passed an order u/s 146 of the Code of Criminal Procedure directing that the village munsiff of Alamanattupatti be appointed receiver for the purpose of holding possession of the disputed properties as that Court was unable to satisfy itself as to which of the parties was then in possession. Accordingly the village munsiff entered possession and has been collecting the rents and profits thereof.

2. The respondents to this application filed O.S. No. 141 of 1943 on the file of the District Munsiff's Court, Karur, for a declaration of title and possession of the suit properties praying that the Court may be pleased to declare that he is entitled to possession of the properties and to receive rents and profits. The petitioner was sole defendant in the suit. On the 7th December, 1944, this suit was dismissed for default. An application to set aside this order of dismissal under Order 9, Rule 9, Civil Procedure Code, was also dismissed by the District

Munsiff on 20th July, 1945. An appeal against this order shared the same fate at the hands of the District Judge of Trichinopoly on the 15th January, 1946, with the result that the plaintiff's suit for declaration and possession now stands dismissed.

3. The effect of this dismissal under Order 9, Rule 9, Civil Procedure Code, is that the plaintiff is precluded and debarred from bringing a fresh suit on the same cause of action for the same relief.

4. The petitioner who was defendant applied to the Sub-Divisional Magistrate, Karur, for possession of the properties after the suit was dismissed on the ground that the order of the District Munsiff has determined the petitioner's rights. The Sub-Divisional Magistrate passed the order dated the 16th October, 1945, which was practically reinforced by the order dated 30th November, 1946, stating that there has been no declaration by a Civil Court as to who is entitled to the suit properties and therefore the land will continue to be in the possession of the receiver. Now, this application is by the defendant in O.S. No. 141 of 1943 seeking to revise the order of the Sub-Divisional Magistrate as already stated.

5. Mr. Raghavan for the petitioner contends that once the District Munsiff dismissed the suit for default and which dismissal was confirmed by the District Judge, as between the parties to the suit the title has been determined by the principle of *res judicata*. The plaintiff cannot any longer bring a suit on the same cause of action, and that this tantamounts to a declaration of defendant's title. No doubt, under the provisions of the CPC the dismissal of a suit under Order 9, Rule 9 prevents the plaintiff from bringing a suit on the same cause of action, but his rights to the properties, if any, have not been extinguished u/s 28 of the Limitation Act. For the purpose of the present case I do not wish to decide the vexed question as to whether the order of dismissal amounts to a determination by a competent Court of the rights of the parties or as to the person entitled to possession thereof, for the reason, that according to my reading of the decision in *Rajah of Venkatagiri v. Isakapalli Subbiah* ILR (1903) Mad. 410, the parties herein have got a further remedy. The learned Counsel for the petitioner contends that this Court in *Rajah of Venkatagiri v. Isakapalli Subbiah* ILR (1903) Mad. 410 has decided that suits of the nature contemplated u/s 146 of the Code of Criminal Procedure should be filed within six years of the date of the order under Article 120 of the Limitation Act. No doubt the learned Judges have held that either of parties to a decision u/s 146 of the Code of Criminal Procedure has to file a suit within six years for a declaration of title and a suit brought thereafter will be dismissed in limine on the ground that it is barred by limitation. But even so the learned Judges have held that either party is entitled to bring a suit for the recovery of the profits of the land for the reason that the profits received by the Magistrate within six years before the date of suit will not be barred as the right to sue will accrue only from time to time as the profits were received. In such a suit for the recovery of profits the question as to who is entitled the same will have to be decided with the result that the question of title

will also be finally adjudicated. Such a finding in the judgment on the issue of title will have the force of res judicata for the purpose of Section 146 of the Criminal Procedure Code and it would practically operate as a determination of the right of the successful plaintiff to the land under attachment as well as the amount in deposit. That being so, it is not as if the parties here have no further remedy resulting in the property remaining in the custodia legis for all time. Either of the parties is at liberty to bring a suit for the recovery of profits received by the receiver within a period of limitation and the Civil Court will then adjudicate as to who is entitled to the profits of the land. The adjudication of the rights to the profits will finally determine the title to the property also and thereafter the Criminal Court will be bound to recognise this determination of the right of the successful plaintiff and hand over the property to whomsoever has succeeded in the civil suit. Therefore there is no reason for interference with the order of the learned Sub-Divisional Magistrate and this petition is dismissed.