

(1908) 01 MAD CK 0013
In the Madras High Court

Erat Madhavan Mannadi

APPELLANT

Vs

Venganat Swarapa Hil Ravi Varma alias The Valia Nambidi
Styled Rajah and Another

RESPONDENT

Date of Decision : 22-01-1908

Acts Referred:

Citation : (1908) 18 MLJ 39

Judgement

1. For the purposes of the questions we have to determine in this appeal, the facts are these.

2. In 1880, the 1st defendant obtained a lease of certain property from Zamorin No. 1.

3. In 1892, Zamorin No. 2, the successor of Zamorin No. 1, granted a lease of the same property to the plaintiff.

4. The plaintiff filed a suit against the defendant and Zamorin No. 3, who had succeeded Zamorin No. 2, to obtain a declaration that the lease to

the defendant by Zamorin No 1. was invalid. The Court of first instance declared the lease to be invalid and gave the plaintiff a decree for

possession subject to the payment of a certain sum to the defendant as compensation for improvements. The defendant did not appeal against the

decree, and in March 1895, he was paid the compensation money and gave up possession. The Zamorin appealed to the lower appellate Court on

the question of the validity of the lease making the defendant a respondent to the appeal. This appeal was dismissed. The Zamorin then preferred

a second appeal to this Court making, the defendant a respondent, and this Court, in August 1897, held that the lease to the defendant by Zamorin

No. 1. was valid and dismissed the plaintiff's suit. In March 1898 Zamorin No, 3 recovered the arrears of rent of the land in question from 1893

to 1898 from the plaintiff. Upon the decree of the High Court being passed, a creditor of the defendant sought to attach any right by way of restitution which the defendant might have. In January 1901, this Court held, on second appeal, that the creditor was not entitled to an order of attachment. The defendant has not refunded the compensation money and has not yet asked to be restored to possession. He contends that he is entitled to have the mesne profits which the plaintiff has enjoyed during the time pie has been wrongfully in possession of the property set off against the compensation money and he says that he intends to apply for possession if the balance should be in his favour. The lower appellate Court held that the defendant was entitled to an order I by way of restitution, but that he was not entitled to mesne profits since the date of the High Court decree dismissing the plaintiffs suit - August 1897 - since on that date there was nothing to prevent him from refunding the compensation money and asking for possession and there was no objection for the plaintiff to surrender the property until the compensation money had been refunded.

5. The questions are: Is the defendant, in the circumstances, entitled to any order by way of restitution, and if so, on what footing is the account to be adjusted?

6. The first point argued was whether u/s 544 of the CPC the decree of this Court of August 1897 enured for the benefit of the defendant, notwithstanding the fact that he; had not appealed against the decree of the Court of first instance and had accepted the compensation money awarded to him by that decree. The arguments of the Advocate-General that the section did not apply were largely based on the assumption that the defendant appealed upon the question of the amount of compensation without appealing on the question of the validity of the lease to him. It appears, however, that the defendant did not appeal at all to the lower appellate Court. He was a party to the Zamorin's appeals, and we think these appeals were against decrees which proceeded on a ground common to the Zamorin and the defendant within the meaning of the section. In our opinion, therefore, the decree of the High Court enured for the benefit of the defendant.

7. This being our view, it is not necessary to consider whether this question is

res-judicata by virtue of the decree of this Court in A.A.A.O. 41 of

1899, with reference to the rights of the defendant's creditor by way of attachment.

8. As regards the lease to the defendant of 1880 (Exhibit XIV) there is nothing on the face of the document to indicate that the term expired by

effluxion of time in 1892, and the fact that Zamorin No. 3 accepted arrears of rents for the land in question from the plaintiff in 1898, the defendant

being no party to this arrangement, did not, in our opinion, determine the tenancy.

9. We do not think that the refunding of the compensation money by the defendant was a condition precedent to his obtaining relief by way of

restitution. The plaintiff has been wrongfully in possession, and he has been enjoying the profits of the land of which he has been wrongfully in

possession. The defendant is entitled to possession under his lease of 1880, which has never been determined, and, in our opinion, he is entitled to

ask that the account may be adjusted by setting off mesne profits against the compensation money. The question remains, in the taking of the

account for the purpose of ascertaining the sum to be credited to the defendant by way of restitution, is he entitled to be credited with the mesne

profits up to the date of his application or only up to August 1897?

10. The relief which the defendant claims is in the nature of equitable relief, and it does not seem to us to be equitable that he should be permitted

for his own convenience, because at the time his right to relief arose, i.e., in August 1897, he was unable or unwilling to refund the purchase

money, to postpone applying for the relief until the mesne profits had amounted to a sufficient sum to wipe off the amount of the compensation

money. In seeking equity it was for him to do equity. In August 1897 he was entitled to restitution in the shape of the mesne profits received by the

plaintiff from the time he had been wrongfully in possession up to that date, and he was liable to refund the purchase money.

11. We think the accounts should be adjusted on the footing that the defendant had done what, in our view, he ought to have done, viz., applied

for restitution on the dismissal of the plaintiff's suit by the High Court in August 1897 notwithstanding the attachment proceedings to which

reference has been made. The defendant's contention amounts to this : that he

is entitled for his own convenience to wait an indefinite period

before seeking to enforce his equitable right. This contention does not commend itself to us, and we do not think it should be given effect to.

12. We dismiss the appeal with costs and also the Memorandum of Objections with costs.