
(1925) 08 MAD CK 0024
In the Madras High Court

G. Govindasami Pillai

APPELLANT

Vs

V.E.N.K.R.R.M.A. Ramanathan Chettiar and Others

RESPONDENT

Date of Decision : 10-08-1925

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : AIR 1926 Mad 164 : (1925) 22 LW 666 : (1925) 49 MLJ 630

Judgement

1. The plaintiff is the appellant before us. He and the defendants 1, 2 and 3 are trustees of the temple of Chayavanam in Tanjore District.

Defendants 2 and 3 were appointed in 1911 and 1st defendant in 1908. The plaintiff alleged that one Ramalingam Pillai was the common agent of

the parties and on account of his mismanagement disputes arose, which culminated in proceedings u/s 145 Criminal Procedure Code. During the

pendency of those proceedings Ramalingam Pillai died but the Magistrate ordered the attachment of the temple and the properties. The plaint in

para. 9 alleges that the order of the Magistrate attaching the properties is illegal and that the plaintiff is entitled to joint possession of the properties.

The cause of action is given as the order of the Magistrate dated 17th August, 1918 and the plaintiff prays for a declaration that "" he is entitled to

joint possession and enjoyment of the properties described hereunder along with the defendants."" There is no prayer in respect of the office of

trusteeship. Several issues were framed in the case but the suit was dismissed by the Subordinate. Judge with reference to the 6th issue, which and

issues 5, 7 and 8 were all the issues that were considered by him. He held that the plaintiff was bound to ask for an injunction and as he has not

asked for it the suit as framed is bad u/s 42 of the Specific Relief Act and dismissed the suit. We are unable to agree with this view. Mr.

Venkatachari, the learned Counsel for the respondents concedes that he is not able to cite any case in which it has been held that the plaintiff is bound to ask for an injunction in a dispute regarding properties where the properties are in the possession of a third person. In *Kalabhai v. The Secretary of State for India* ILR (1904) B 19 there is an expression of opinion by Chandavarkar and Ashton, JJ., that the suit in the form in which it was brought is bad. That suit was against the Secretary of State for a declaration that the plaintiff was entitled to hold the land which was the subject-matter of the suit free of assessment. It may be that in such a case an injunction is a proper relief to ask for but we do not wish to express any final opinion about it. The learned Judges granted an amendment and this question was really unnecessary. The cases in *Thakur Prosad alias Shumboo Narain v. Punkal Singh* (1907) 8 CLJ 485 and in *Kunhamed v. Kutti* ILR (1891) M 167. related to decrees. It may be said that in the case of decrees an injunction to the defendant not to execute a decree is the proper relief. *Kunj Bihari v. Keshavlal Hiralal* ILR (1904) B 567. related to an office and it was said in the case of an office a prayer for possession is unnecessary and a prayer for injunction will give all that can also be obtained by a prayer for possession. In *Rachappa Subrao v. Shidappa Venkatrao* ILR (1918) B 507. Sir Lawrence Jenkins said: "It is at once apparent that as to the whole of the property except the house no consequential relief could have been prayed and that even as to the house the injunction prayed was demurrable in the sense that no cause of action was disclosed which could have supported this relief." In that case the property other than the house was in the possession of the Collector and their Lordships thought that it is unnecessary to ask for an injunction. Following this opinion of the Privy Council we think that, though an injunction, may be granted if the plaintiff wants it, it cannot be said to be relief which the plaintiff is bound to ask when he does not feel any apprehension from the conduct of the defendant and when he does not feel it necessary to ask for it. We think the suit is maintainable in the form in which it is framed and allowing the appeal we set aside the decree of the Subordinate Judge and remand it to him for disposal according to law. The costs in the High Court will abide the result. The Court-fee paid by the appellant will be refunded.