
(1935) 12 MAD CK 0015
In the Madras High Court

Ganesa Moorthi Naidu

APPELLANT

Vs

Jayalakshmi Ammal and Others

RESPONDENT

Date of Decision : 19-12-1935

Acts Referred:

Specific Relief Act, 1877 — Section 9

Citation : AIR 1936 Mad 650

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The appellant was a defendant in a suit for profits of land regarding which the plaintiffs had got a decree in a possessory

suit u/s 9, Specific Relief Act, against one Minakshi Ammal. This decree was executed and the plaintiffs got delivery. Afterwards the defendants

are alleged to have trespassed and reaped the crops. The plaintiffs filed two suits, one against the present appellant and others who are alleged to

have actually removed the crops, and another against the legal representatives of Minakshi who had died and her alleged tenants. The latter suit

was to establish the plaintiff's title to the land. It appears that the two suits were tried together and that it was agreed that the decision of the suit for

profits should depend upon the decision of the title suit, there being apparently no claim for profits in the title suit put forward on behalf of the legal

representatives of Minakshi. The title suit brought by the plaintiff was dismissed, and in the suit for profits the District Munsif, finding that the

plaintiff had no title, dismissed that suit also. The learned District Judge in appeal, relying on Munna Singh v. Ausan Singh 1918 All 12 , holds that

it was not open to the trial Court in the suit based on the possessory decree to go into the question of the plaintiff's title as against the defendant in

the possessory suit under whom the appellant was asserting a lease.

2. It is, however, contended for the appellant that whether the procedure adopted by the trial Court of allowing the decisions in the title suit to

settle the question of the right to the crop, removed in the interval between the possessory decree and the filing of the later suits, is proper or not,

this procedure having been adopted by the consent of all the parties, it is unjust to re-open the question and direct the trying of the suit for the

crops as if it were unconnected with the suit based on title. I feel that there is a good deal of force in this contention. At the same time it has to be

remembered that the procedure adopted by the trial Court does in fact give sanction to an unlawful defiance of the possessory decree by the

present appellant. If once it be recognised that a person against whom a possessory decree has been passed can set up a tenant unlawfully to

remove the crops, hoping that any subsequent suit will fail by reason of the defect in the decree-holder's title, the way is laid open to highhanded

acts which are not only unsanctioned by law, but are most likely to lead to serious disturbances of the peace. It seems to me obvious that, in the

circumstances of this case the proper procedure for the trial Court to adopt was to decide the suit regarding the crops purely on the question of

fact regarding the removal and on the basis that the plaintiffs had a good possessory title as against the persons who are alleged to have removed

the crops at the time of their removal.

3. The fact that the plaintiffs were ultimately found not to have title should have been taken into consideration not in the suit regarding these crops

but in the suit in which the title was sought to be established; and in that suit it would have been possible for the trial Court to give such a decree

regarding profits as would put the real owner into the position in which she would have been had she not failed in the possessory suit. But to allow

the two suits to be tried together, the result of the title suit settling the claim in the suit based on the removal of the crops, is to give sanction to an

unlawful procedure which, in my opinion, it is undesirable to encourage. And in spite of the fact that the parties consented to this procedure, I am

of opinion that the learned District Judge was right in refusing to countenance it and in requiring the disposal of the suit based on the possessory

decree without reference to the title independent of that decree. In this view I

dismiss the appeal with costs. Leave to appeal is refused.