
(1894) 04 MAD CK 0010
In the Madras High Court

Govinda Pillai

APPELLANT

Vs

Ramanuja Pillai and Others

RESPONDENT

Date of Decision : 19-04-1894

Acts Referred:

Citation : (1895) ILR (Mad) 171

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

1. We must accept the Judge's finding that plaintiff was not dispossessed in February 1891 as alleged, and that neither plaintiff nor his vendor had possession for the last forty years. The finding, however, that defendants' possession was adverse is not warranted by the circumstances from which it is inferred. Defendants themselves admitted that they paid raelvarara and claimed only a kudivaram right. Mere non-payment of molvaram for any number of years is not sufficient to give defendants a kudivaram right unless their possession has been accompanied by an assertion of such right for more than twelve years prior to the suit. The Judge's finding that plaintiffs vendor exercised no rights of ownership for a period of forty years is opposed to the defendants' plea that melvaram was paid till fifteen years ago, and Courts are not at liberty to go in defendants' favour behind the plea set up by the defendants themselves in the suit.
2. Therefore the question whether the defendants have acquired a kudivaram right by prescription depends on the further question whether such right was set up more than twelve years prior to the suit.
3. We must ask the Judge to try the issue indicated above.

4. Fresh evidence may be adduced on either side, and the finding is to be submitted within one month from the date of the receipt of this order, and

seven days will be allowed for filing objections after the finding has been posted up in this Court.

5. In compliance with the above order, the District Judge submitted a finding, which was to the effect that the defendants had not set up a claim to

the kudivaram right for more than twelve years prior to the suit. The case coming on for final disposal, the Court delivered the following judgment.

JUDGMENT

6. Upon the finding we must allow this appeal, and setting aside the decree of the lower Appellate Court, restore that of the Court of First

Instance.

7. The present case is not on all fours with that in *Mohima Chunder Mozoomdar v. Mohesh Chunder Neoghi* ILR 16 Cal. 473 In that case the

defendants denied the plaintiff's title as proprietor and set up that of a third party. Here the plaintiff's title is found to be established, and the

defendants' plea of non-payment of melvaram is found not to have been accompanied by assertion of adverse title.

8. We therefore, allow this appeal and decree as above and direct respondents to pay appellant's costs in this Court and in the Lower Appellate

Court.