

(1935) 12 MAD CK 0001
In the Madras High Court

Gudimetla Ramireddi

APPELLANT

Vs

Gudimetla Satyam and Others

RESPONDENT

Date of Decision : 12-12-1935

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : AIR 1936 Mad 636 : 167 Ind. Cas. 356 : (1936) 43 LW 773

Hon'ble Judges : Wadsworth, J

Bench : Single Bench

Judgement

Wadsworth, J.—These matters arise out of a suit brought by the present appellant for a declaration of his title to a certain land and an

injunction or in the alternative for possession. The plaintiff originally acquired an interest in the land by a purchase. The defendant disputed that title.

There was some sort of a fight in the course of which the plaintiff is alleged to have caused grievous hurt to one of the defendants. A criminal

prosecution of the plaintiff resulted and it is common ground that there was a compromise of the disputes between the parties in order to put an

end to the criminal prosecution and as a result of that compromise the plaintiff executed a settlement deed conveying his rights in the property to the

defendants. This was followed up by another dispute, the plaintiff alleging that the conveyance executed by him in the course of criminal

proceeding's was invalid. It would appear that there was a danger of a fresh resort to violence and that. The Police intervened and the Magistrate

issued notice, to both parties u/s 145, Criminal Procedure Code. Thereupon the plaintiff filed the suit referred to above and two days after the filing

of the suit, in pursuance, of an order prohibiting the parties, from entering upon the property in dispute, both the plaintiff and the defendants gave an

undertaking to the Magistrate that they would not enter upon the property without orders of Court.

2. The suit dragged on for years. During the first year a Receiver was appointed who permitted the plaintiff to harvest the crops on terms. In the

subsequent years the right to harvest the crops was auctioned by the Court and in each year the plaintiff was the successful bidder, and he

executed a series of security bonds which have not been exhibited in these proceedings, but they were looked into by both the lower Courts, and I

am informed that by their terms the plaintiff undertook to pay the amount of his bid whenever ordered to do so that the Court and gave his

property as security for so doing. The suit terminated in a decree of the trial Court recognizing the title of the plaintiff and also finding that he was in

possession. The matter was taken up in appeal and the Appellate Court found that the plaintiff was bound by his conveyance of title, to the:

defendants and was, therefore, not entitled to the property, and in the circumstances found that no decision as to possession was necessary. After

this decree dismissing the plaintiff's suit, the defendants filed an execution application in which they prayed for costs and interest, for realization of

the profits during the period of the suit by the enforcement of the security bonds and for mesne profits by way of restitution during the period

between the decree of the trial Court and the Appellate Court's decree. The learned District Munsif permitted execution to proceed for costs and

interest, but rejected the application so far as it related to the enforcement of the security bonds and the claim for mesne profits the interval between

the two decrees. The lower Appellate Court, disagreeing with the latter part of the decision of the District Munsif, held; that the security bonds

could be enforced execution proceedings or by a separate suit according to their terms and according to the person in whose favour they were

made out, and also held that the defendants were entitled to mesne profits on the analogy of restitution u/s 144, Civil Procedure code, with respect

to the subsequent period, though the order would have to be passed u/s 151. Civil Procedure Code, as the: defendants were not, strictly speaking,

ejected from the property by the operation of the decree which had been reversed.

3. The plaintiff has filed both an appeal and a revision petition with the same grounds to cover any possible objection that a second appeal, does

not lie. The main contention urged before me is that no appeal lay from the order of the District Munsif in so far as it relates to matters which do

not fall strictly u/s 144, though the application was framed as coming under that section. The argument is that Section 151, under which the learned

Subordinate Judge finds that the order should have been passed, is not an appealable section and that the order of the lower Court rejecting the

application for the enforcement of the security bonds and subsequent mesne profit must be regarded not as an order u/s 144 but as an order u/s

151 and therefore it must be treated as one against which no appeal lay. The learned Subordinate Judge met this contention by a reference to the

case in Raman Nambyar and Others Vs. Kizhakkekootil Pulasseril Thekke and Others, wherein it was held that the right of appeal is determined

not, by what the Court should have done, but, by what it purported to do, and that if the Court purported to act under a provision of law which

carries a right of appeal against the order, that right of appeal will exist even though the order should have been under another provision against

which there is no appeal.

4. It might of course be argued that while the Court has power to set right a wrong which has been done by the use of a wrong provision of law, if

that provision of law itself contemplates an appeal, it need not necessarily have a right to direct the doing of a positive act under a non-appealable

provision merely because the Court has refused to do that act, purporting to do so under a provision which gives a right of appeal. But I do not

think it is necessary to go into such subtleties. The matter seems to me to be covered by the provisions of Section 47, Civil Procedure Code.

Granted that an order under the inherent powers of the Court is not per se appealable, if that order is in fact an order passed on an application

made by one of the parties as against another party and relating to the execution, discharge or satisfaction of the decree, it falls u/s 47 and for that

reason it is appealable. Section 47 provides only for the procedure and the forum whereby a decision is to be reached. It does not give the powers

by virtue of which the Court decides; these powers have to be sought in other provisions of the Code. They may be derived from Section 144;

they may be derived from Section 151.

5. If an order for restitution made u/s 144 is appealable because it also falls u/s

47, similarly an order u/s 151 for something analogous to restitution made as between the parties would also fall u/s 47 and be subject to an appeal. A similar reasoning is found in decisions of this Court reported in *Akshia Pillai Vs. Govindarajulu Chetti and Others*, and *Govinda Padayachi Vs. Velu Murugayya Chettiar and Another*, and it has been held in the case in *Somasundaram v. Ghokkalingam* 40 M. 780 : 38 Ind. Cas. 806 : AIR 1917 Mad. 185 : 5 L.W. 267. That Section 47 Civil Procedure Code, covers all cases of restitution. I must, therefore, hold that an appeal lay to the Subordinate Judge from the order of the District Munsif declining to order restitution or to order reliefs analogous to restitution. The next question is whether on the merits the order of the Subordinate Judge is contrary to law. It is argued that the defendants have not been shown, to be in possession at the time when the suit was instituted. There is a finding of one Court which has not been expressly reversed, that the plaintiff was in possession and that therefore no proceedings by way of restitution or by way of analogy to restitution can lie. Now the facts are, as I understand them, that shortly before the suit was filed both the parties were threatening to resort to violence to support their claim to possession of this property.

6. In all probability the possession of neither party was effective, but each was prepared to use violence to resist entry by the other. Those circumstances brought about the interference of the Police and the magistracy. At any rate within two days after the filing of the suit both the parties agreed not to enter upon the suit properly and thereafter the property was certainly in custodia legis until it was given up to the plaintiff for specific purposes subject to the control of the Court. The defendants have been found to have title, and in the absence of any clear indication to the contrary, when there was apparently no effective possession by either party, one may apply the presumption that possession follows title and hold that the defendants were at least in such a position as regards possession on the filing of suit as to justify the Court, in the exercise of its duty to do justice and restore the parties to their position before the suit, in ordering the surrender to the defendants of the property which the plaintiff got during the defendants of the suit and the appeal entirely by the action of the Court in making a provision for the cultivation of the land pending suit.

7. The plaintiff put himself under the direction of the Court as to the disposal of the money realized by the cultivation of this land and handed over to him by the Court and he cannot now be heard to say that the Court cannot make orders for the disposal of the money which he undertook to pay. As to the period subsequent to the first Court's decree, here again the plaintiff got possession entirely by the action of the Court. Had the Court not passed this decree, the property would have been held by the Court with a prohibition of entry by either party pending the decision. In such circumstances it seems to me that the Court was entitled to make such orders as were just and proper for the disposal of the profits which accrued to the plaintiff by reason of the decree which has been found to be bad. In the result, therefore, I hold that the lower Appellate Court's order is correct and dismiss the appeal and the revision petition with costs one set. Leave to appeal is granted.