

(1931) 07 MAD CK 0011
In the Madras High Court

Guruvammal

APPELLANT

Vs

Arumuga Padayachi and Others

RESPONDENT

Date of Decision : 30-07-1931

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100

Citation : AIR 1932 Mad 164 : 136 Ind. Cas. 769 : (1931) 34 LW 989 : (1931) 61 MLJ 894

Hon'ble Judges : Curgenvan, J

Bench : Division Bench

Judgement

Curgenvan, J.—The following table shows how the parties whose names occur in these proceedings are connected:

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Krishnaswami Aiyar Subramania Aiyar=Sivakami. Seshagiri=Lakshmi

Aiyar | Ammal.

| | |

| _____ | |

Guruvammal. Venkataramana Aiyar=Venkammal. |

| | Sons.

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Ramachandra Aiyar.

2. Subramania Aiyar died in 1899 leaving a will bequeathing the land now in dispute to his nephew Venkataramana Aiyar. By a codicil he gave his

widow Sivakami Ammal a life-interest in it. Another bequest was of a sum of money to form a trust fund, of which Sivakami was during her life-

time the self-constituted trustee. The widow survived Venkataramana Aiyar, and she too made a will, and in it she declared that Venkataramana

Aiyar had told her, before his death, that she might include the land in the trust already created. After her death in 1924, on the strength of the

allegation in this will that the property was trust property, Venkataramana Aiyar's sister Guruvammal applied to Religious Endowments Board for

an order u/s 42 of the Act (II of 1927) appointing her to discharge the duties of the trustee, and, u/s 77, for an order allocating the income of the

Endowment between religious and charitable purposes. The Board passed orders accordingly. The order appointing Guruvammal was challenged

a little later by Sivakami's brother's widow and her sons, on the ground that Sivakami had nominated them as trustees in her will but the order

already passed in Guruvammal's favour was substantially confirmed. This lady then proceeded to apply to the District Court, u/s 78 of the Act, to

be put in possession of the trust property. In her application she named a number of respondents, among them being Sivakami's brother's widow

and her sons, who had contested her appointment before the Board, and one Arumugam Padayachi, said to be the lessee of the property now in

dispute. The learned District Judge ordered notice to the respondents, but no notice was issued, because he subsequently acceded to a

representation of the petitioner's vakil that no notice was necessary. Ex parte orders were accordingly passed directing delivery, symbolical in the

case of the property now in question, which was in the occupation of a tenant.

3. Then arose opposition from another quarter. Matters had proceeded so far on the footing that the property was trust property. Venkataramana

Aiyar's widow and her alleged adopted son disputed this, denying that Sivakami had received from Venkataramana Aiyar any such permission as

her will alleged to treat the property as trust property. These persons claimed the land as their own, and not unnaturally complained that the

proceedings before the Board and the District Court had taken place behind their backs. They accordingly asked the District Judge to set his

previous order aside and dismiss Guruvammal's application. The matter came before the successor to the learned District Judge who had passed

the previous order. He has treated the application as sustainable upon the analogy of Order 21, Rule 100 of the Civil Procedure Code, and has

posted the case for evidence. Against this order Guruvammal has preferred this Civil Revision Petition, and the point for decision is whether the

District Judge was right in re-opening the matter.

4. Now it is in the first place apparent that neither the order of the Board appointing Guruvammal, nor the order of the District Court directing

delivery to her, is binding upon the respondents, who were no parties to these orders. The respondents' learned Advocate would go further, and

criticise both orders as improper, the Board's, because it did not satisfy itself that the property was in fact a religious endowment, the District

Court's, because it failed to exercise judicially the discretion vested in it by Section 78. As the Board's order is not under direct attack, I do not

propose to examine its jurisdiction to pass such an order. As regards the order of the learned District Judge, Section 78 lays down that the Court

may order delivery to a person producing the Board's order of appointment when such person "is resisted in, or prevented from, obtaining

possession." It is unfortunate, I think, that the learned District judge was prevailed upon to pass his order without notice to any of the respondents

named in the application. The section appears to me to give the Court the opportunity of deciding upon the merits of the resistance which, in order

to get such an order, the applicant has to allege. This is conceded on behalf of the petitioner here, the Court acts not merely administratively but

judicially, and, on cause being shown, may refuse to enforce the Board's order. Such a position was in fact impliedly conceded by the presence of

an array of respondents in the application. It is noteworthy, however, that the names of the present respondents were conspicuous by their

absence, and I cannot absolve the petitioner from attempting to get possession of the property without raising the eminently disputable question of

the allegation of entrustment contained in Sivakami's will. Although these persons were ignored, however included among the respondents was

Aruniugam Padayachi, whom they claim as their own tenant, and it seems probable that had notice gone to him the question of title might still have

been brought up for inquiry.

5. The question then is, an order having been passed in these circumstances,

whether the Court has jurisdiction to re-open it and adjudicate upon the respondents' claims. There are no doubt technical difficulties in the way of holding that Order 21, Rule 100, Civil Procedure Code, will operate *proprio vigore*, nor does the learned District Judge invoke it otherwise than by analogy. His Court is charged with the duty of executing the Board's orders, and if an order in execution results in the dispossession of a third party, it should be within his competence to investigate the matter and pass such orders as may appear appropriate. When a duty of a particular character is cast upon an established Court, it imports, in the words of Lord Haldane, L.C., in *National Telephone Company, Ltd. v. Postmaster-General* (1913) A.C. 546 "that the ordinary incidents of the procedure of that Court are to attach". But I think his right to take such a course may, at least in the circumstances of the present case, be put upon still broader grounds. I take it that the applicant should have made the respondents parties to her application, and that the District Judge should have issued notice to them. There is ample authority for the view that an order passed in the absence of such preliminaries is voidable or void as against them. In *Painter v. Liverpool Gas Co.* (1836) 111 E.R. 478 : 3 Ad. & E. 433 it was held that a distress warrant issued without notice was illegal, Lord Denman, C.J., referring to *Harper v. Carr* (1797) 101 E.R. 970 : 7 T.R. 270, where Lord Kenyon said:

It is an essential rule in the administration of justice that no man shall be punished without being heard in his defence; the party must be summoned before a warrant of distress is granted . . . ; and on that summons many circumstances may appear to show that a warrant of distress ought not to be granted.

6. In (1917) L.R. 45 I.A. 25 (Privy Council) the Privy Council had to consider the effect of an order passed *ex parte* excusing the delay in presenting an appeal, and decided that it was open to the respondent to obtain a reconsideration of the order.

It must, therefore, in common fairness be regarded as a tacit term of an order like the present that, though unqualified in expression, it should be open to reconsideration at the instance of the party prejudicially affected.

7. So here we may, I think, read into the District Judge's *ex parte* order the implication that it will be subject to any objections to which the act of

delivery may give rise. Another Privy Council case which declares the inherent power of the Court to rectify a mistake inadvertently made is *Debi*

Bakhsh Singh v. Habib Shah (1913) L.R. 40 IndAp 151 : ILR 35 A. 331 : 25 M.L.J. 148 (P.C.). I do not think that it will do for the Court to

refuse to take such a course on the ground that the party damnified may recover his legal rights by suit. As was laid in *Syud Tuffuzzool Hossein*

Khan v. Rughoonath Pershad (1871) 14 M.I.A. 40 it is the duty of the Court to give redress. I think accordingly that the learned District Judge has

acted rightly in entertaining the respondents' application, and I dismiss the Civil Revision Petition with costs.