

(1919) 10 MAD CK 0029
In the Madras High Court

Idumbu Parayan and Others

APPELLANT

Vs

Pethu Reddy and Another and Senni Parayan and Others

RESPONDENT

Date of Decision : 08-10-1919

Acts Referred:

Citation : 54 Ind. Cas. 451

Hon'ble Judges : Seshagiri Aiyar, J; Moore, J

Bench : Division Bench

Judgement

1. The application for execution arose out of a partition decree. Some of the members of the family sued their co-parceners for partition and

sought to set aside certain alienations in favour of strangers. The decree gave the plaintiffs their share. The Court found that the alienation

impeached was binding upon the members of the family to the extent of about Rs. 800 and odd and directed that the plaintiffs do obtain possession

of the property in the possession of the alienees after paying a sum of Rs. 400 and odd. In terms and in effect, this portion of the decree was for

redemption. The time fixed, viz., 10th July 1916, the suit for possession of the property shall stand dismissed. Nor does it say that the right to

recover possession on subsequent payment is barred to the plaintiffs. The plaintiffs did not pay the amount within the time stipulated. They

subsequently applied for possession of the property after paying into Court the amount which was ordered to be paid. The Courts below have held

that, as the money was not paid within the time fixed, the plaintiffs are not entitled to any further plaintiffs of time and that they are not entitled to

recover possession of the property.

2. In the first instance on payment of the money by the plaintiffs, they were put

in possession. On an application made by the alienees to cancel that order for possession on the ground that the money was not paid in time, the District Munsif reversed his own order and ordered the plaintiffs to restore possession to the alienees. That order has been confirmed by the lower Appellate Court. It is against it that this civil miscellaneous appeal has been presented.

3. In our opinion, the application for extension of time ought to have been granted by the District Munsif. He quotes a large number of authorities

beginning with Ramaswami Kone v. Sundara Kone 31 M.P 28 : 17 M.L.J. 495 : 3 M.L.T. 26 and says that he has no power to extend the time.

What these decisions have laid down is that by the mere fact of confirmation of the decree by the Appellate Court, further time is not ipso facto

given for payment of the money. They are not authorities for the position that the Munsif has no jurisdiction to extend time. Under Order XXXIV,

Rule 8, last clause, the Court may, upon good cause shown, and upon such terms as it thinks fit, from time to time postpone the day fixed for

payment. In Het Singh v. Tika Ram 14 Ind. Cas. 240 : 34 A.P 388 : 9 A.L.J. 381 where the decree directed that, if the money was not paid within

a particular time, the suit should stand dismissed, the learned Judges held that, as there was no bar to redemption, time should be extended and

that the decree did not work itself out. If we turn to the earlier portion of Order XXXIV, Rule 8, it is clear that until the defendant obtains an order

debarring plaintiff from seeking redemption, the right to apply for further extension of time is not lost. In the picturesque language of Kekewich, J.,

in Collinson v. Jeffery (1896) 1 Ch. D. 614 : 65 L.J. Ch. 375 : 74 L.T. 78 : 44 W.R. 311 by the lapse of time fixed for payment, the action is not

dead but is in a comatose condition, it will become dead only when an order is obtained under Order XXXIV"" , Rule 8, debarring plaintiff from

redeeming. Till then it is alive and is capable of being revised. Under the last sentence of Order XXXIV, Rule 8, Courts have power to extend time

for payment. We are, therefore, of opinion that the lower Courts had jurisdiction and were not precluded, by the fact that the money was not paid

within the time limited, from extending the period for payment. There is one decision of this Court which, on the face of it, appears to be conclusive

of the arguments advanced by the learned Vakil for the appellants. In Moideen

Kuppai v. Jionnuswamy Pillai 23 Ind. Cas. 63 : 1 L.W. 882 : 16

M.L. 430 reference was made to Sections 148 and 151, Civil Procedure Code, and it was pointed out that these sections have no bearing in

regard to applications for extension of time under a mortgage decree. We are not in a position to ascertain what the exact language of the decretal

order was in that case. It may be that the order directed that, if the money was not paid within the time limited, the right of redemption would

become barred. If that had been specifically mentioned in the decree, no further application by the defendant to bar the right of redemption need

have been made. The decree would have worked itself out and would have prevented the Court from exercising its powers, under the last clause

of Order XXXIV, Rule 8. As we are not in a position to ascertain the facts on which that decision proceeded, we do not regard it as conclusive of

the present question.

4. We have made these observations because the decree appears to be one for redemption, Having regard to the language of the decree and also

in view of the charge which the defendants obtained for a portion of the money which was held binding on the family, the decree in this case must

be construed as above indicated. In that view, we hold, following *Collinson v. Jeffery* (1896) 1 Ch. D. 614 : 65 L.J. Ch. 375 : 74 L.T. 78 : 44

W.R. 311 and *Het Singh v. Tika Ram* 14 Ind. Cas. 240 : 34 A.P 388 : 9 A.L.J. 381 that it was competent to the District Munsif to extend the

time and that there was no good cause for his reversing his original order. We must set aside the orders of both the lower Courts and dismiss the

petition for redelivery of the property made by the defendants. As the mistake has been largely due to the laches of the plaintiffs, we do not think

that they are entitled to any costs.

5. Each party will bear his own costs. The civil revision petition is dismissed. No costs.