
(1917) 04 MAD CK 0035
In the Madras High Court

Kanniammal Alias Janakiammal, Minor, by next friend G.
Sundara Iyer

APPELLANT

Vs

Sanka Krishnamurthy

RESPONDENT

Date of Decision : 20-04-1917

Acts Referred:

Citation : 43 Ind. Cas. 25

Hon'ble Judges : John Wallis, C.J;Oldfield, J

Bench : Division Bench

Judgement

John Wallis, C.J.—This is an appeal from the judgment of Mr. Justice Bake well, dismissing a suit brought by the minor plaintiff for a declaration that the mortgage decree passed against her father-in-law, brother in law and herself, as representatives of her deceased husband, is not binding on her, on the ground that she was sued and the decree obtained against her as a major. The plaintiff also asked for an injunction restraining the defendant from executing the decree against her interest in the mortgaged property. The learned Judge has dismissed the suit on the ground that the plaintiff is debarred from bringing this suit for a declaratory decree by the proviso to Section 42 of the Specific Relief Act that "No Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so." The learned Judge observes that the plaintiff is now entitled to redeem the mortgaged property and holds, therefore, that she is, not entitled to the declaration prayed for, as she has not sued for redemption. With great respect, we are unable to agree with this conclusion. There is, on the records of the Court, a decree binding the interest of the plaintiff and, if that decree is not binding upon her, we think that she is entitled to a declaration to that effect and to cancellation of so much of the decree.

2. With reference to the language of the proviso to Section 42 of the Specific Relief Act that no such suit is to be brought "where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so," we think that

the meaning of the proviso is that as things stand at the time when the suit is brought the plaintiff should be entitled to further relief, which she omits to claim, either because she does not want to pay the stamp duty or for any other reason, and that the proviso does not extend to cases where the plaintiff is not entitled to the further relief, unless she does something further which she is not bound to do and which she may not be in a position to do, as, in this instance, find the mortgage money. She has, by the Limitation Act, a very long time to find the mortgage money and, in our opinion, she cannot be required to do so at once on pain of losing her right to a declaration that a decree which is on the record of the Court is not binding upon her and for cancellation of so much of the decree on the records of the Court as purports wrongly to bind her. We have not been referred to any authority which deals directly with this part of the case and we think it would be an undue extension of the proviso to hold that the plaintiff was to be debarred from bringing a suit for declaration on the ground that she is not in a position to find the mortgage money and consequently to ask for redemption.

3. The appeal must be allowed and the suit remanded. Costs will abide.

Oldfield, J.

4. The proviso to Section 42 of the Specific Relief Act is to the effect that no declaration should be made, "Where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so." It seems to me that the further relief contemplated means further relief arising from the cause of action on which the plaintiff's suit for declaration is based. Here the cause of action was the existence of a decree alleged to have been illegitimately obtained, by which the plaintiff was required to redeem a mortgage within a specified time. The cause of action for a redemption suit will be independent of the existence of that decree; it will simply be the fact that the property has been mortgaged.

5. In these circumstances I do not think that the proviso is applicable to the present case. I agree, with my Lord the Chief Justice.