
(1947) 03 MAD CK 0020
In the Madras High Court

Karunai Ammal and Others

APPELLANT

Vs

Karuppan Goundan and Another

RESPONDENT

Date of Decision : 10-03-1947

Acts Referred:

Citation : AIR 1947 Mad 373 : (1947) 60 LW 308 : (1947) 1 MLJ 337

Hon'ble Judges : Yahya Ali, J

Bench : Division Bench

Judgement

Yahya Ali, J.—The order of the Magistrate in this case is clearly wrong. At the time of the filing of the civil suit, the property was in custodia

legis and all that was necessary for the plaintiff in the civil suit was to seek a declaration of his title. It was not necessary for him to ask further for

possession of the property as the criminal Court would be bound to respect the declaration made by the Civil Court and to give due effect to it.

See The Public Prosecutor Vs. M.S. Menoki of Calicut, and Ponnambala Thevar Vs. Ramaswamy Iyer, . Another circumstance to be noticed in

this case is that the present respondents were defendants 1 and 2 in the civil suit. When they raised the contention in that suit that the suit was bad

because it was for a mere declaration and no consequential relief was prayed for, issue No. 10 was framed upon this contention in these words,

Whether the suit is barred by Section 42 of the Specific Relief Act.

2. The Court found that issue in the negative. The respondents have no title to the land as found by the Civil Court and the petitioners have been

declared to be entitled to the whole of item No. 1 and two acres in item No. 2, while defendants 3 to 5 who are not parties to the proceedings u/s

145 of the Criminal Procedure Code have been declared to be entitled to the rest

of item No. 2. Defendants 1 and 2 claimed as lessees under the Revenue Inspector who was appointed by the Court for the management of the land u/s 146. After the declaration of the rights of the parties the custody of the Court must come to an end and with it the lease under which the respondents claim any interest in the land.

3. The petition is allowed and the order of the Sub-Divisional Magistrate is set aside. The lower Court will take necessary steps to transfer the possession of the property to the petitioners in accordance with the declaration made by the civil Court and also direct payment to them out of the rent realisations in accordance with the civil Court's decree.