
(1932) 11 MAD CK 0012
In the Madras High Court

(Kotikalapudi) Pakirayya

APPELLANT

Vs

(Kodiyala) Kamasastri and Another

RESPONDENT

Date of Decision : 07-11-1932

Acts Referred:

Citation : AIR 1933 Mad 328 : (1933) 37 LW 437

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—The appeal arises out of a suit instituted by the plaintiff under Order 21, Rule 63, Civil P.C. The properties involved in

the appeal are half of the items in the plaint, other than items 1, 6, 9, 10 portions of 12 and items 21 and 22: see p. 19 of the judgment. These

properties were in the possession of defendant 2's husband as a tenant under the zamindar. They were sold in execution for non-payment of

arrears of rent under the Estates Land Act. The plaintiff's case is that at such sale the zamindar purchased the lands and afterwards gave pattas to

him, constituting him a tenant under the Act. These lands were attached in execution of a decree obtained by defendant 1 against defendant 2's

husband. The attachment was on 2nd September 1921. The plaintiff filed objections to the attachment in 1922. The pattas which were given to him

with respect to these properties are Exs. D and D-I dated 3rd October 1923 and 6th February 1922. At the date of the attachment he was not

able therefore to show that he had a title to these properties. His petition was therefore disallowed, and he has instituted the present suit under

Order 21, Rule 63. The learned Judge held in the first instance that the suit was not maintainable by reason of the fact that the plaintiff had no title

at the time when the attachment was made. This opinion would entail the dismissal of the suit, but he went into its merits also and held that, if a suit would lie, the plaintiff had established his title to items 18 to 20 of the suit properties, as well as the items covered by the sale certificates, Exs. G, G-1, G-2, G-5, and G-6 and that the plaintiff had not succeeded in establishing his title to items 3, 4, 14, 16 and portions of items 13 and 15. His claim to item 4 is not pressed in this appeal.

2. The learned Counsel for the appellant argues first that a suit is maintainable under Order 21, Rule 63, in this case; and secondly, that the learned

Judge should have allowed in his favour the items which he has disallowed, namely, 3, 14 and 16, and portions of items 13 and 15. So we have to

decide two points in this appeal. The first point is whether in a suit under Order 21, Rule 63 it is open to the plaintiff to assert the title which he has

at the time when the suit was instituted to show that the order of attachment should not have been made. Order 21, Rules 58 to 63, relate to

investigation of claims and objections to attachment. Under Rule 59 what the claimant or objector has to prove is that "as the date of the

attachment he had some interest in, or was possessed of, the property attached.

3. Whether he had any interest at the date of the attachment in the property, is the question which the Court has to decide. If the decision goes

against the claimant, he has to establish his title to the property under Rule 63 before the expiry of one year; otherwise the order of attachment

prevails against him and becomes conclusive, and he cannot assert his title to the property. It is argued on behalf of the appellant that, though he

was not able to establish his title to the property attached at the date of the attachment, still it is open to him to assert such title in his suit under

Order 21, Rule 63, Civil P.C., since he has obtained pattas from the zamindar establishing his title to the property; so that, if he is able to establish

his title having regard to the evidence that he is able to offer in support of it, the Court may consider whether the attachment was validly made or

not. The terms of Order 21, Rule 63 are these:

Where a claim or any objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to

the property in dispute

4. These terms are wide enough to include a suit based upon title. No doubt

according to the decisions, what the Court has got to consider is, whether the attachment was rightly made. But having regard to the words of the section, this question can be settled-if the claimant gives evidence in regard to his title to the property-by considering whether he has succeeded in establishing his title to it. The observations of the learned Judges in *Najimunnessa Bibi Vs. Nacharaddin Sardar*, support this view. Rankin, J observes: The suit, if brought, is not limited by any special standard of evidence or of law. The claimant may, if necessary, thresh out his title in the fullest and most ultimate sense. But if the title which he claims is not the ultimate full title to the property, then, of course, he must be content to assert whatever the title claimed may be.

5. Later on the learned Judge says:

In either case the material date is the date of the attachment. The decree-holder has to show that the attachment was valid but has been wrongfully released. The claimant has to show that the attachment was wrongful but has been improperly retained. To show either of these things the real and ultimate right to the property may be put in issue.

6. Page, J., states his view thus at p. 565 (of 51 Cal.):

In my opinion in a suit instituted under Rule 63 the object of the suit is to establish the plaintiff's title to the property, and not merely to establish his right to have the attachment released.

7. So it is open to the claimant in a suit under Order 21, Rules 63 to show that he has a title to the property and that therefore the refusal to raise the attachment was wrong. Reference in support of this position may also be made to the decisions in *Seetharami Reddi v. Venku Reddi* (1901)

11 ML J 344 and *V. Ranganatha Aiyar Vs. Srinivasa Aiyangar and Others*, and to the observations of the learned Judges in *Veyindra Muthu Pillai*

v. Maya Nadan AIR 1920 Mad 126 and *Arunchalam Chetty v. Periasdmi Servai* (5). This position is not seriously contested by the learned

Counsel for the respondents. His argument is that in the plaint the claimant confined his relief for a declaration that the order of attachment was

wrongly made and that he does not base it upon his title. It is true that the plaint is worded rather narrowly, but it cannot be disputed that the

claimant has given evidence to show that at the time when the suit was

instituted, he had a title to the property, The learned Judge has also considered the evidence relating to the title of the claimant to the disputed properties. In these circumstances we are not inclined to construe the plaint in the narrow form suggested by the respondent. It therefore follows that a suit to show that the claimant has a title to the property and that the order of attachment was not properly made would lie under Order 21, Rule 63, Civil P.C., and the present suit cannot therefore be dismissed on that account.

8. The next point for consideration is whether, in addition to the title to the properties which has been declared in favour of the claimant, he is entitled to get a declaration of title with regard to the disallowed items we have referred to above. In respect of items 3, 14 and 16 the learned Judge says that the plaintiff has no sale certificates. But it is not disputed that he has taken pattas from the zamindar. The learned Judge says also that the zamindar is not shown to have acquired the raiyat's interest in these lands by purchase or otherwise. This is relied upon by respondent 1 in support of the learned Judge's disallowance of the plaintiff's claim. But in his written statement he does not say that he has any title to these properties, and it cannot be denied that pattas have been given by the zamindar to the plaintiff. In these circumstances we do not see what other evidence the claimant could give in support of his title. Obviously the pattas show that the zamindar treated the claimant as his tenant, and this would never have been done by the zamindar unless he had a title to the property. We would therefore hold that the lower Court should have declared the right of the claimant to these items as well.

9. The other items are portions of items 13 and 15 referred to in para. 16 of the lower Court's judgment. The learned Judge disallows these items on the ground that the attachment was prior to the sale. But the learned Counsel for the respondents has very frankly conceded that the ground is untenable, having regard to Section 109, Estates Land Act. The claim of the appellant to these items also should be allowed. We would therefore set aside the decree of the lower Court, and give a decree to the plaintiff not only for the items which have been allowed in his favour by the lower Court but also for the other items, the title to which we have dealt with in our judgment. In the circumstances we direct each party to bear his own

costs throughout The memorandum of objections is dismissed. No costs.