
(1916) 08 MAD CK 0009
In the Madras High Court

Kovouri Basivireddi and Others

APPELLANT

Vs

Nidumoori Ramayya and Another, Geddala Pulligadu and
Another, Vunnamatlu Ramudu and Another and Chinthapalli
Chandrigadu and Another

RESPONDENT

Date of Decision : 07-08-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63

Citation : 36 Ind. Cas. 445

Hon'ble Judges : Abdur Rahim, O.C.J.; Seshagiri Aiyar, J; Phillips, J

Bench : Full Bench

Judgement

Abdur Rahim, Offg. C.J.

1. The question in these Letters Patent Appeals is, whether the suits instituted to establish the plaintiffs right to certain moveable property attached

by the judgment-creditors of a third person and for recovery of its value, the property having been sold in execution, within a year of the date of

the order dismissing the plaintiffs claim preferred under the provisions of the Civil Procedure Code, but more than a year from the date of

attachment and of sale, is governed by Article 11 of the Limitation Act. The answer depends on whether recovery of the value of the property

comes within the scope of a suit to establish, the right which the plaintiff claims to the property in dispute within the meaning of Rule 63 of Order

XXI, Civil Procedure Code, and of Article 11 of the Limitation Act.

2. It is contended that the only relief which can be given in such a suit is what the court which heard the claim could have granted under Rule 60,

i.e., to release the property from attachment. In fact it is argued that the suit authorised by Rule 63 is merely in the nature of an appeal.

3. In the first place it cannot be said that the words "to establish the right" in their ordinary grammatical sense necessarily mean the obtaining of a mere declaration of plaintiff's title to the property and excludes all consequential reliefs. If the Legislature had intended to limit the relief that might be given in such a suit to a mere declaration of title, they would be expected to use that expression with which the Indian Legislature is quite familiar. Then it is difficult to conceive of any good reasons why the owner of the attached property who, being unsuccessful in securing recognition of his claim in the execution proceedings, is permitted to institute a regular suit to establish his rights should not obtain the full reliefs to which he might be entitled. If, on the other hand, he was to be confined to a mere declaration of his title he would in many cases, such as when the goods attached have been sold, be driven to a second suit although there might be no contested question for a trial. The plaintiff might, no doubt, apply for an injunction restraining the sale of the property, but in many cases, such as where the property attached is of a perishable nature, an injunction like that would not be in his interest. Further, the Court might well take the view that injunction should not be granted in the circumstances of the case. The wider view of the scope of suits of this class has been taken in a number of cases notably in *Kishori Mohun Rai v. Harsooh Dass* 12 C.k 696, which decision was subsequently confirmed by the Privy Council without their Lordships expressing any dissent from the opinion expressed by the learned Judges of the Calcutta High Court on this point; in *Sadu bin Raghu v. Ram bin Govind* 16 B. 608 where the matter is very fully discussed by Jardine and Taling, JJ., and by this High Court in *Kunhiamma v. Kunhunni* 16 M. 140. On the other hand, no decisions to the contrary directly covering the point have been brought to our notice. But an attempt was made to support the narrower construction by referring to certain expressions in the judgment of the Judicial Committee in *Bibi Phul Kumari v. Ghanshyam Misra* 7 C.L.J. 36 : 12 C.W.N. 169 : 10 Bom.L.R. 1: 17 M.L.J. 618: 14 Bom.L.R. 41, where in considering the amount of Court-fees payable they say that a suit of this class was in the nature of an appeal from the order of the executing Court disallowing the claim. They could not, however, be taken to have meant that in their Lordships' view the Court hearing the suit could grant only such relief as the executing Court could have given, for ex concessis the former could

give a declaration of title binding upon the parties while that is not within the scope of the proceedings in execution.

4. I agree in the judgment of Wallis, C.J., and would dismiss the Letters Patent Appeal with costs.

SESHAGIRI AIYAB, J.

5. I agree. There are two matters on which I like to say a few words. In the first place, the language employed in Article 11 is comprehensive

enough to include not only a prayer for a declaration but also the consequential reliefs, if any, dependent on the declaration. The establishment of

the right to the property comprised in the order involves the granting of all the prayers relating to the property. It was held in *Kunhiamma v.*

Kunhunni 16 M.k 140 that a suit u/s 233 should include a prayer for possession also, if that is outstanding. A second suit for possession would be

obnoxious to Order II, Rule 2.

6. The second point is whether in a suit brought under Order XXI, Rule 63, the Legislature contemplated different periods of limitation for the

different reliefs claimed. I concede that there is nothing unusual in one of the reliefs in a suit being within time and the other being barred by

limitation. But as in the majority of cases the claim for consequential relief can be ascertained only after obtaining a declaration, the remedy by suit

will prove infructuous, if the shorter period of limitation were applied to the consequential relief. The suggestion that during the pendency of the

claim proceedings a suit for an injunction should be instituted is ingenuous but wholly impracticable. I doubt whether any Court would entertain

such a suit and put it off indefinitely to await the result of the claim proceedings.

7. The decision of the Judicial Committee in *Bibi Phul Kumari v. Ghanshyam Mitrd* 7 C.L.J. 36 : 12 C.W.N. 169 : 17 M.L.J. 618 : 35 I.A. 22,

relied on to show the nature and scope of the suit under Rule 63, does not conclude this question. That was a suit where no consequential relief

was necessary, as the party was in possession. Their Lordships had to consider only the question of the Court-fees. I do not think that that

decision compels us to hold that the suit contemplated by Article 11 can only be a declaratory suit. I am of opinion, therefore, that the view taken

by the learned Chief Justice (Wallis, C.J.) is right.

Phillips, J.

8. In addition to the authorities quoted by Wallis, J., (now Chief Justice) in his judgment, we have the authority of the Privy Council for holding that

when a claim in execution proceedings has been dismissed and the claimant brings a suit for a declaration of his right to the property and for an

injunction restraining the decree-holder from executing his decree against it, the suit is one u/s 283 of the CPC of 1882. Bibi Phul Kumari v.

Ghanshyam Misra 35 C.s 202: 7 C.L.J. 36 : 12 C.W.N. 169 : 10 Bom.L.R. 1 : 5 A.L.J. 10: 14 L.R. 41. The question, no doubt, did not arise

under the Limitation Act but under the Court Fees: Act, but that cannot alter the principle of the ruling. It seems to me quite clear that the words of

Order XXI, Rule 63, cover a suit like the present one. The words of the rule are, a suit to establish the right which he claims to the property in

dispute"" and these words are wide enough to cover not only a mere suit for declaration but also one for relief. consequential on such declaration.

To ""establish"" a right means something more than to ""declare"" a right and would seem to me to imply everything that is necessary to secure the

proper enjoyment of the right. The fact that the plaintiff also claims damages caused by the subsequent sale does not affect the nature of the suit,

which is clearly one to establish his right to the property claimed. If Order XXI, Rule 63, is only to be applied to a suit for a mere declaration, the

claimant would afterwards have to file a subsidiary suit for possession, and this would be in contravention of Order II, Rule 1. I think, therefore,

that the present suits should have been brought within one year of the order dismissing the claim, the Limitation Article applicable being Article 11,

and agree in dismissing the appeals.