
(1916) 08 MAD CK 0076
In the Madras High Court

Kovvuri Basivi Reddi and Others

APPELLANT

Vs

Nidumoori Ramayya et al

RESPONDENT

Date of Decision : 07-08-1916

Acts Referred:

Citation : (1917) ILR (Mad) 733

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

Bench : Full Bench

Judgement

Abdur Rahim, Officiating C.J.

1. The question in these Letters Patent Appeals is whether the suits instituted to establish the plaintiff's 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 plaintiff's claims preferred under the provisions of the CPC 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 authorized 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 the plaintiff's title to the property and exclude 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 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 circumstance 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. Hursook Dass* ILR (1886) Calc. 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* ILR (1892) Bom. 608 where the matter is very fully discussed by Jardine and Telang, JJ., and by this High Court, in *Kunhiamma v. Kunhunni* ILR (1893) Mad. 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 judgments of the Judicial Committee in *Phul Kumari v. Ghanshyam Misra* ILR (1908) Calc. 202 where, in considering the amount of court-fee 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 Ayyar, 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 *Kunhianima v. Kunhunni* ILR (1898) Mad. 140 that a suit u/s 283 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 ingenious, 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 *Phul Kumari v. Ghanshyam Misra* ILR (1908) Calc. 202 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: *Phul Kumari v. Ghanshyam Misra* ILR (1908) Calc. 202. 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 claimants 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.