

(1916) 08 MAD CK 0032
In the Madras High Court

Kovvuri Basivireddi (died) and Others	APPELLANT
Vs	
Nidumoori Ramayya and Others	RESPONDENT

Date of Decision : 17-08-1916

Acts Referred:

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

Citation : (1916) 31 MLJ 394

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

Bench : Full Bench

Judgement

Abdur Rahman, Offg. 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 claim 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, CPC 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 means the obtaining of a mere declaration of the plaintiffs' 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 right 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 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 Mohan Boy v. Hursook Dass* ILR (1886) Cal. 606 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 Gobind* ILR (1892) Bom. 608 where the matter is very fully discussed by *Jardine and Telang, JJ.* and by this Court in *Kunhiamma v. Kunhunni* ILR (1892) Mad. 110. 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. Ghanshayam Misra* ILR (1907) Cal. 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 Aiyar, 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 ILR (1892) 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 2 Rule 2.

6. The second question 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. Ganshayam Misra* ILR (1907) C. 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, 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 rights to the property and for an

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

Ganshayam Misra ILR (1907) Cal. 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 mere declaration, the claimant would afterwards have to file a subsidiary suit for possession

and this would be in contravention of Order 2 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.