

(1894) 05 MAD CK 0008
In the Madras High Court

Krishnabhupati Devu

APPELLANT

Vs

Ramamurti Pantulu and Another

RESPONDENT

Date of Decision : 01-05-1894

Acts Referred:

Citation : (1895) ILR (Mad) 405

Hon'ble Judges : Arthur J.H. Collins, C.J.; Parker, J

Bench : Division Bench

Judgement

1. The only point arising in the appeal is whether the Subordinate Judge has rightly decided that it is necessary for the plaintiff to sue for possession.

2. It is not alleged in the plaint that plaintiff was in possession or that the property had actually passed to his possession, but the learned Advocate-

General contends that when the property was attached and symbolical possession given u/s 319, Civil Procedure Code, the plaintiff's father was

really in possession on plaintiff's account, and hence that there was no dispossession of plaintiff, though his father may have been himself

dispossessed.

3. We were referred to the following cases: Narainan v. Nilakandan Nambudri ILR 4 Mad. 131; Dayachand Nemchand v. Hemchand

Dharamchand ILR 4 Bom. 515; Juggobundhu Mukerjee v. Ram Chunder Bysack ILR 5 Cal. 584 and Lokessur Koer v. Purgun Roy ILR 7 Cal.

418 but we do not think they support this contention. The two first are authority for the proposition that mere attachment is not dispossession, and

the two latter show that formal or symbolical possession operates as a complete transfer of possession.

4. Where, therefore, the land being in the actual occupation of tenants, the

formal possession was given to the auction-purchaser (second defendant's father) u/s 319, Civil Procedure Code, the plaintiff's father was completely dispossessed whether he held on his own account or for his son. Plaintiff was then a minor, but had his father as his guardian brought this suit on his account, there can be no doubt, that he would have been obliged to sue for possession having been actually dispossessed and the property transferred to another. The case is not altered by plaintiff attaining majority, and we think the principle laid down in *Narayana v. Shankunni* ILR 15 Mad. 255 applies.

5 Taking this view we must dismiss the appeal with costs.