
(1938) 01 MAD CK 0018
In the Madras High Court

M. Narayana Singh

APPELLANT

Vs

K. Batcha Sahib and Another

RESPONDENT

Date of Decision : 19-01-1938

Acts Referred:

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

Citation : AIR 1938 Mad 741 : (1938) 47 LW 724 : (1938) 1 MLJ 803

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The appellant attached mortgages of certain immovable properties in execution of a decree passed by the

Subordinate Judge of Chingleput in O.S. No. 6 of 1919. The first respondent claimed to be the assignee of the mortgages and applied for removal

of the attachment. His application was dismissed and he then filed this suit in accordance with the provisions of Order 21, Rule 63 of the Code of

Civil Procedure. He asked for a declaration that the assignment of the mortgage in his favour by the second respondent was valid and for the

vacation of the order dismissing the application for removal of the attachment. His suit was successful and the declaration asked for were granted.

The appellant desires this Court to set aside the decree on two grounds. In the first place he says the suit as framed does not lie inasmuch as

consequential relief was not claimed. In the second place he says that the trial Court erred in holding that the assignment of the mortgages was

valid.

2. The appellant has not printed the pleadings nor has he printed the evidence. With regard to the first point he argues that inasmuch as the assignor

of the mortgage was made a party to the suit he should have added a prayer for possession and therefore a suit for a mere declaration is not maintainable. This suit, as I have already mentioned, was filed under the provisions of Order 21, Rule 63 of the Code of Civil Procedure, and a plaintiff suing under that rule is only required to obtain a declaration of his rights. In *Kottarathil Puthiyapurayil Pokker v. Balathil Parkum Chandrankandi Kunhamad* (1918) 36 M.L.J. 231 : ILR 42 Mad. 143 Krishnan, J., pointed out that under that rule the plaintiff can sue to establish the right which he claims to the property in dispute. The question was also dealt with by a Full Bench of this Court consisting of White, C.J., and Subramania Aiyar and Davies, JJ., in *Kristnam Sooraya v. Pathma Bee* ILR (1905) 29 Mad. 151 (F.B.). There it was held that the proviso to Section 42 of the Specific Relief Act does not operate to take away from a party against whom an order has been made u/s 280, 281 or 282 of the Code of Civil Procedure, 1882 (which correspond to Order 21, Rules 60, 61 and 62 respectively of the Code of 1908) the special right conferred by Section 283 (now Order 21, Rule 63) to sue for a declaration of his title in so far as it is affected by the order which he seeks to impeach. In that case the plaintiff brought the suit u/s 283 of the Code of Civil Procedure, 1882, for a declaration of his right as mortgagee of the attached properties and for cancellation of the order of rejection. That suit was therefore on all fours with the present suit. The mere fact that the assignor of the mortgage was joined as a party cannot alter the character of the suit. The learned Advocate for the appellant has drawn our attention to the decision of Pandrang Row, J., in *Muhammad Hussain Ambalam v. Ramanatha Aiyar* (1935) 42 L.W. 649. The question for decision there was whether the valuation of the suit for the purpose of jurisdiction was correct, and we do not regard that case as having bearing on the question before us. Even if the decision were intended to have the effect which the learned advocate says it has we should be bound to follow the judgment of the Full Bench in *Kristnam Sooraya v. Pathma Bee* I.L.R. (1905) 29 Mad. 151 (F.B.). Moreover it follows from what I have said that we accept it as correctly stating the law. The present suit was one clearly under Order 21, Rule 63 and was properly framed.

3. Inasmuch as the appellant has not printed the evidence he is not in a position to challenge the findings of the learned trial Judge on the facts. The

learned trial Judge considered the evidence and there is nothing in his judgment which shows that he took an incorrect view of the evidence. In

these circumstances his decision must stand. The appeal fails and will be dismissed with costs in favour of the first respondent.