

(1932) 12 MAD CK 0016
In the Madras High Court

Mannaluri Yegnanarayanamurthi and Another	APPELLANT
Vs	
Munnaluri Balakrishnayya and Others	RESPONDENT

Date of Decision : 15-12-1932

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10, 47

Citation : AIR 1933 Mad 411 : (1933) 37 LW 452 : (1933) 64 MLJ 489

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—In considering whether, while dismissing the appeal, the appellant should be made to pay the costs of the successful

respondents, we have to decide the question whether the appellant is competent to prosecute this appeal. The present appellant is a mortgagee of

the rights of the plaintiff in the suit. The suit having been dismissed, the plaintiff's widow filed an appeal to this Court against the decree, the plaintiff

having died in the meanwhile. His widow is now dead, and the mortgagee has filed an application to this Court to be allowed to continue the

appeal. Under Order 22, Rule 10(1) in other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit

may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved". In Maharaja Sir

Manindra Chandra Nandi v. Ram Lal Bhagati it was held by the Privy Council that "where a decree for possession and mesne profits has been

obtained, there is no power under Order 22, Rule 10 or Section 47, Civil Procedure Code, to join as a defendant to the suit a tenant to whom

during the pendency of the suit the defendant has let the property so as to compel the tenant to account for profits which he has received from the

land"". On the reasoning of their Lordships contained in this decision it is argued that the mortgagee of the plaintiff's interests in this case should not be allowed to continue this appeal.

2. The decision in 27 CWN 29 (Privy Council) was passed in appeal from the judgment of the High Court of Patna reported in Ram Kumar Lal

Bhagat v. Raja Mukund Sahi (1916) 1 Pat. L.J. 596. Their Lordships reversed the decision of the High Court. The facts of the case were briefly

these. The respondents before the Privy Council instituted as plaintiffs a suit against one Raja Mukund Sahi to recover possession of six villages

and a jungle which they claimed. The Court of first instance dismissed the suit. Just one year after the dismissal the Raja gave a lease for a term of

years of the right of mining for mica, and otherwise exploiting the jungle, to the appellant before the Privy Council. On appeal by the unsuccessful

plaintiffs the High Court reversed the decision of the first Court and made a decree in favour of the plaintiffs and remitted the case to the Lower

Court to take an account of the mesne profits to which the appellants were entitled for three years prior to the institution of the suit and for the

period thereafter till the delivery of possession. In inquiring into the mesne profits the Amin not only ascertained the rents which the Raja had

received from the appellant before the Privy Council and the other tenants but also proceeded to inquire what were the profits which the various

lessees might be taken to have made from the mica which they had extracted during the terms of their leases pending the somewhat protracted

litigation. It is clear, as pointed out by the Privy Council, that in ascertaining such mesne profits the successful plaintiffs would not be entitled to the

actual rents which the trespassing defendant had received, nor could the lessees be rendered liable for damages in that suit to which they were not

parties in respect of the mica that they had removed. On the receipt of the Amin's report the plaintiffs (that is, the respondents before the Privy

Council) relying on the statements with regard to the profits obtained from the mines made an application that the several lessees from the Raja

should be made parties to the proceedings. The appellant before the Privy Council raised various objections and said that since he knew of the

plaintiffs' claim to the property he had surrendered his leases and that he should not be made a party. The Subordinate Judge accepting his

contentions dismissed the plaintiffs' application. The High Court in appeal from his order held, basing their order on the language of Order 22, Rule

10, Civil Procedure Code, that "the appellants are entitled to have the persons in question added as parties to the proceedings, and compel them

to account for any profits which they may have received from the land". Their Lordships of the Privy Council set aside this order, and in doing so

they considered the scope of Order 22, Rule 10, Civil Procedure Code.

3. Its scope is thus described: "The order contemplates cases of devolution of interest from some original party to the suit, whether plaintiff or

defendant, upon some one else. The more ordinary cases are death, marriage, insolvency, and then come the general provisions of Rule 10 for all

other cases. But, they are all cases of devolution." Then after referring to Section 372 and noting that the words "in addition to" in the earlier

Code have disappeared in the present Code their Lordships state this: "But the matter, does not rest upon" this change. The liability, if any, of the

appellant to pay damages for removal of the mica is not a liability which has devolved to him from the defendant Raja. They were both liable, if

liable at all, as trespassers and a case, if any, against the appellant must rest upon his action and the direct relation established thereby between

him and the plaintiffs." And then they point out that serious injustice should be done if any other view was taken. The reasoning contained in the

last extract we have quoted from the judgment affords the real basis of their Lordships' decision. Order 22, Rule 10 relates to cases of

devolution, and, as the liability of the appellant in that case was the liability of a trespasser which cannot be said to have devolved upon him from

the defendant Raja, their Lordships held that he cannot be made liable in that suit and therefore refused to make him a party, the provision of

Order 22, Rule 10 in such a case being absolutely inapplicable. This is the reasoning of their Lordships and it is not affected, if we may say so with

great respect, by the change in the language of the present rule. We may also point out that there is nothing in their Lordships' observations to

justify the view that the devolution of interest contemplated in Rule 10 is a devolution of the entire interest. The terms of the rule which speaks of a

"devolution of any interest" do not support such a view. For the above reasons it appears to us that the reasoning of their Lordships in the Patna

case cannot be relied upon for the view that the mortgagee of the plaintiff's interests in the suit should not be substituted in the place of the

mortgagor and be allowed to continue the suit on his death. For the same reasons we regret we are unable to accept as correct the contrary view

enunciated by Krishnan Pandalai, J., in C.M.As. Nos. 69 and 70 of 1929 etc. The decision in R.V. Srinivasa Aiyangar and Another Vs. Ry.

Pratapa Simha Rajah Saheb, the Junior Prince of Tanjore, has no application to the case before us, as in that case a mortgagee was sought to be

brought on record after the termination of the suit.

4. In the present case the petitioner being a mortgagee of the deceased plaintiff's share in the suit properties, an "interest" as contemplated by

Order 22, Rule 10 has devolved on him, and he may therefore be allowed to continue this appeal. We would therefore allow his petition. He being

thus declared competent to conduct the appeal, it must follow, the appeal having been dismissed, that he should pay the costs of the respondents.

It is argued by Mr. Raghava Rao on his behalf that the costs should be limited to the costs incurred by the respondents since the date of his

application. We see no reason to limit the order in this manner. The appeal is dismissed with costs-one set.

5. The petitioner in C.M.P. No. 995 of 1932 will get his costs of the application.