

(1947) 07 MAD CK 0025
In the Madras High Court

Mrs. Saradambal Ammal

APPELLANT

Vs

E.R. Kandasamy Goundar and Others

RESPONDENT

Date of Decision : 16-07-1947

Acts Referred:

Citation : (1947) 2 MLJ 374

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—This appeal arises out of a suit for specific performance of a contract entered into by the defendant to convey an estate

known as the Kosalai estate to the first plaintiff.

2. The contract is evidenced by a compromise decree dated 8th April, 1942, in O.S. No. 67 of 1941 on the file of the Sub-Court, Nilgiris,

whereby the first plaintiff undertook, inter alia to deposit Rs.16,500 by the 30th June, 1943, and the defendant on his part agreed to convey the

estate. The first plaintiff entered into an agreement on 17th June, 1943, with the second plaintiff purporting to sell the estate for Rs. 25,000 to the

latter. Under this agreement, the first plaintiff got Rs. 17,880 which she deposited in Court in pursuance of the compromise decree on the 29th

June, 1943, and brought the present suit for specific performance of the compromise by the defendant executing a conveyance either to her or to

the second plaintiff.

3. It would appear that the second plaintiff in his turn purported to execute a sale for Rs. 30,000 of the estate in question to one Kandasami

Goundan on 12th May, 1946, who applied in I.A. No. 115 of 1946 in the lower Court to be impleaded as the third plaintiff in the suit. This

application having been allowed, the first plaintiff who opposed the application has preferred this civil miscellaneous appeal attacking the order of the lower Court.

4. Learned counsel for the appellant argues that Order 22, Rule 20 of the CPC does not apply to the case and the Court below had no power to

allow Kandasami Goundan to come on record as the third plaintiff as he has not acquired any "interest" in the estate which is the subject-matter of

the suit. It is argued that the words "any interest" in Order 22, Rule 20 of the Code refer to interest in property and as the third plaintiff has not

acquired any interest in the Kosalai estate under the document of the 12th May, 1946, the provision does not entitle the third plaintiff to come on

record to continue the proceedings as he seeks to do. We are unable to accept this contention. Apart from the fact that the first plaintiff herself

impleaded the second plaintiff in the suit although the latter had acquired no interest in the estate under the document dated 17th June, 1943, for

the simple reason that the first plaintiff herself who executed the document has not yet acquired any such interest, we are of opinion that the word

interest "is used in Rule 20 of Order 22 in a much wider sense. Learned counsel concedes that if in a suit for specific performance the original

plaintiff died, the person on whom the right devolved would be entitled to continue the suit, for the action is not personal and would not terminate

with the death of the original plaintiff. Similarly, if there is an assignment of the right by the original plaintiff during the pendency of a suit for specific

performance there is no obvious reason why the person to whom such right has passed should not be able to continue the suit under Rule 20 of

Order 22. The words "any interest" in this rule include in our opinion, any transferable "right to sue" spoken of in the earlier rules of the order

which provide for its devolution in cases of death. The contention therefore that the "assignment, creation or devolution of any interest" referred to

in Rule 20 mean an assignment, creation or devolution of an interest in tangible property cannot be accepted.

5. Reference was made to Basant Singh v. Mahabir Pershad (1913) 25 M.L.J. 301 : L.R. 40 IndAp 86 : I.L.R. 35 All. 273 (P.C.) as supporting

the contention of the appellant. That was a case where a person who had entered into a financing agreement with the original plaintiffs in a suit for

recovery of possession of Immovable property sought to continue the suit after the original plaintiffs compromised their claim, and the question

arose whether such person was competent to continue the suit. Their Lordships held that the agreement in question did not confer a present right to

the possession of the property which was the subject-matter of the suit, and that therefore the person who entered into such an agreement with the

original plaintiffs was not competent to continue the suit. That decision has no application to the present case which is a suit for specific

performance in which the first plaintiff's right to relief is not based on any interest in the property. The other decision cited, viz, S.V.S. Nelliappa

Pillai Vs. Sethuramalingam Pillai and Others, , merely follows the decision of the Privy Council referred to above and does not carry the matter any

further.

6. The appeal fails and is dismissed with costs of the first respondent.