

(1940) 10 MAD CK 0024
In the Madras High Court

M.T. Rajamanickam Chetty and Another	APPELLANT
Vs	
T.R. Abdul Halim Sahib	RESPONDENT

Date of Decision : 24-10-1940

Acts Referred:

Citation : AIR 1941 Mad 389 : (1941) 53 LW 64 : (1941) 1 MLJ 22

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

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The question involved in this appeal is whether the right to continue a suit filed in the Court of the

Subordinate Judge of Chingleput has devolved upon the respondent. The suit was instituted by one T.S. Abdul Kuddus Sahib on the 9th March,

1934. The plaintiff asked for a decree for Rs. 15,000 as damages flowing from the wrongful termination of a lease in his favour and the entry upon

the leased premises of the defendants, who are the appellants. The lease was dated the 9th September, 1930 and was for a term of three years

which commenced on the 15th of that month. The premises leased consisted of a building which was being used as a cinema theatre. The

agreement between the parties was that the lessors and the lessee should share equally in the rents of certain shops which were on the premises

and the moneys derived from the letting of the theatre for entertainments. The plaintiff averred that the lessors resented the fact that he was entitled

to half the rents of the property and as the result of this they entered upon the premises wrongfully and ousted him therefrom. He also averred that

valuable articles left by him upon the premises had been removed and that other articles had been damaged. The sum of Rs. 15,000 was made up

of profits which he claimed he had been deprived of as the result of wrongful action of the appellants and the loss he had suffered as the result of

the removal from the premises of articles belonging to him. The plaintiff's claim was based entirely on the alleged wrongful action of the appellants

as the two concluding paragraphs of the plaint, Nos. 18 and 19, emphasize. They . read as follows:

18. The plaintiff claims an aggregate sum of Rs. 15,000 by way of damages against the defendants and pays a court-fee of the value of Rs. 937-7-

0.

19. The cause of action for this suit arose at Conjeevaram within the jurisdiction of this Hon"ble Court on 9th March, 1931, the date when the

defendants wrongfully dispossessed the plaintiff and subsequently de die in diem till 9th September, 1931, during which period the defendants

wrongfully dispossessed the plaintiff in breach of the terms of the agreement

2. On the 17th May, 1937, the plaintiff sold the whole of his assets to the respondent under a registered deed of sale. The sale deed has not been

printed in full and it is said that the portion which has been printed has not been correctly translated. It is, however, common ground that the

respondent bought ""the profit and loss"" of this suit and that the deed purported to confer upon him the right to conduct it. The plaintiff died five

days later after its execution. The plaintiff's sister, his brother and the respondent each applied to the Court of the Subordinate Judge to be allowed

to continue the suit. The sister and the brother each claimed the right as the legal representative of the deceased. The respondent claimed under the

deed of sale of the 17th May, 1937. The Subordinate Judge dismissed the application of the sister and the brother, but granted that of the

respondent. The defendants lessors then appealed to this Court. Their appeal was" heard by Wadsworth, J., who concurred in the decision of the

Subordinate Judge so far as it concerned the respondent. The sister and the brother did not contest the Subordinate Judge's finding that they were

not entitled to be brought on record. This appeal is from the judgment of Wadsworth, J.

3. Section 6(e) of the Transfer of Property Act says that a mere right to sue cannot be transferred; and it is accepted by the learned Counsel that

as the result of this provision there cannot be an assignment of a suit which has

been filed for the purpose of recovering damages, either in contract or in tort. It is lawful, however, for a plaintiff in a pending suit to assign the benefit which he may obtain under the decree to be passed in the suit;

but this does not give the assignee of the fruits of the action the right to interfere in proceedings in the action--vide *Glegg v. Bromley* (1912) 3 K.B.

474, which was accepted by the Privy Council as correctly stating the law in *Subhadrayamma v. Venkatapathi Raju* (1924) 47 M.L.J. 93 : L.R.

52 IndAp 1 : ILR 48 Mad. 230 . Therefore the right which the plaintiff purported to confer upon the respondent of conducting this suit was

ineffective. All that the deed could confer upon him was the right to the fruits of the litigation.

4. The Court has merely to consider the nature of the suit and as the plaint can only be read as embodying a claim for damages resulting from the

alleged wrongful entry of the appellants upon the demised premises, the suit cannot be continued by the respondent.

5. For these reasons we allow the appeal with costs here and below.