

**(1936) 05 MAD CK 0013**  
**In the Madras High Court**

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|-----------------------------------------------|------------|
| O.A.O.K.C.T. Chidambaram Chettiar and Others  | APPELLANT  |
| Vs                                            |            |
| Swaminathan alias Samidurai Thevar and Others | RESPONDENT |

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**Date of Decision :** 07-05-1936

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 9

**Citation :** AIR 1937 Mad 101 : (1937) 45 LW 171 : (1936) 1 MLJ 33

**Hon'ble Judges :** K.S. Menon, J

**Bench :** Division Bench

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**Judgement**

K.S. Menon, J.—The suit is to recover possession of the plaint lands with past and future mesne profits. It is alleged that that property was

purchased in Court auction by one Ramaswarai Chettiar in 1923, that the said Ramaswami Chettiar was merely a benamidar for Chidambaram

Chettiar, the father of the plaintiff, that on the defendants obstructing the said Ramaswami Chettiar in taking possession"" of the property, the latter

filed O.S. No. 88 of 1925 on the file of the District Munsiff of Tiruthuraipundi, that as he died during the pendency of the suit and no legal

representative of his was brought on record the suit abated and that in spite of it the plaintiffs, being the benaficial owners, are entitled to maintain

the suit. The defendants contended that the suit is barred by Order 22, Rule 9 of the Civil Procedure Code, as the cause of action is the same as

that in O.S. No. 88 of 1925. That plea of the defendants was upheld by both the lower Courts; hence this second appeal, by the plaintiffs.

2. The only question for decision is whether the suit is barred by Order 22, Rule 9 of the Civil Procedure Code. It is not disputed that the cause of

action in this suit is the same as that on which O.S. No. 88 of 1925 was based, vis., the right of the plaintiffs or their benamidar Ramaswami

Chettiar to get possession of the property and the infringement of that right by the defendants. It is also not disputed that on the death of

Ramaswami Chettiar his representatives were not brought on record and an application filed by the plaintiffs to bring them on record as legal

representatives was ultimately dismissed by the High Court. The result was that no one was brought on record as the representative of Ramaswami

Chettiar and that an order was made that the suit abated. Now, under Order 22, Rule 9 of the Civil Procedure Code:

Where a suit abates or is dismissed under this order, no fresh suit shall be brought on the same cause of action.

3. The contention of the defendants therefore is as that O.S. No. 88 of 1925 abated and as the cause of action for that suit and this is the same this

suit is incompetent. The learned advocate for the appellant answers that there was no legal representative for Ramaswami Chettiar in respect of the

right litigated by him in O.S. No. 88 of 1925 and that therefore the suit never abated by reason of such legal representative not having been

brought on record and that the order that the suit abated is wrong. The question therefore for decision is whether Ramaswami Chettiar had any

legal representative in respect of the right litigated by him in O.S. No. 88 of 1925. Admittedly, he has sons who, the plaintiffs allege, declined to

come on record. The question is whether they could be regarded as his legal representatives. By "legal representative" is meant a person who in

law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues

or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Vide Section 2(11) of

the Civil Procedure Code. It cannot be denied that if Ramaswami Chettiar was benamidar for the plaintiffs he is in some sense of the term a trustee

for the plaintiffs and his sons could succeed to that trusteeship. This position is clear from the following observations of the Judicial Committee in

the case of Raja of Deo v. Abdullah (1918) 35 M.L.J. 46 : L.R. 45 IndAp 97 : ILR 45 Cal. 909

When, therefore, Lajjadhari executed the conveyance in favour of Rajeswari at the instance of Raja Bhikham, he (Raja Bhikham) was the true

owner. Kashinath was a trustee for Raja Bhikham, and Lajjadhari could only succeed to his father's trusteeship.

4. Relying on these observations, this Court (Sundaram Chettiar, J.) held in the case of Muhammad Sheriff Sahib Vs. Sayyed Kasim Saheb and

Others, , that the transferee from the heirs of a benamidar mortgagor had some interest entitling him to maintain a suit to redeem, It was observed:

But here, the suit was filed by the transferee from the heirs of the alleged benamidar. The question is whether anything survives to the heirs or their

assignees after the death of the benamidar. In the decision of the Privy Council in Raja of Deo v. Abdullah (1918) 35 M.L.J. 46 : L.R. 45 IndAp

97 : ILR 45 Cal. 909 ,their Lordships, dealing with status of a benamidar, have observed at pp. 918 and 919 that he would be a trustee for the

real owner, and his son could succeed to the trusteeship. This shows, that the heirs of the benamidar, would, by reason of some interest devolving

on them, be entitled to maintain a suit of this kind.

5. It is however pointed out for the appellant that in another case, vis., Bada Kristam Naidu Vs. Durvada Patrudu alias Janakiramayya Chowdhari

and Others, , Mr. Justice Odgers was not inclined to consider the decision of the Privy Council referred to above as laying down that a trusteeship

devolved on the deceased benamidar's legal representative. But the question for decision there was whether, when the benamidar dies after

obtaining a decree, his legal representatives are entitled to come on record in preference to the beneficiary. There was no question there whether

the legal representative had any interest entitling him to come on record before the decree was obtained. If as their Lordships of the Privy Council

observed, the benamidar is a trustee and his son could succeed to the trusteeship, it is clear that Ramaswami Chettiar's sons had some interest by

virtue of which they could have been brought on record as legal representatives, though it may be that when the question is considered u/s 47(3)

they may not have, such a right in preference to the real beneficiaries. Having regard to the dictum of the Judicial Committee and the decision of

this Court in Muhammad Sheriff Sahib Vs. Sayyed Kasim Saheb and Others, , I am inclined to hold that the sons of Ramaswami Chettiar can be

considered as his legal representatives in respect of the right litigated in the previous suit and that they, not having been brought on record within the

time allowed, the suit abated. It follows that Order 22, r. 9 is a bar to this suit. The decree of the lower Court is therefore confirmed and the

second appeal is dismissed with costs.