

(1927) 12 MAD CK 0042
In the Madras High Court

P. I. Govindaraja Naicker

APPELLANT

Vs

K. Kassim Sahib and Others

RESPONDENT

Date of Decision : 09-12-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : 108 Ind. Cas. 542

Hon'ble Judges : Venkatasubba Rao, J

Bench : Single Bench

Judgement

Venkatasubba Rao, J.—This is an application for leave to amend the plaint and it raises the question whether I can grant an amendment in a suit which I have no jurisdiction to try. The facts are briefly these. The plaintiff purchased from the 1st and 4th defendants, 7500 trees in a garden situated at Tiruvottiyur beyond the limits of the city of Madras. That garden along with some properties in the city, had been, previously mortgaged by those defendants to defendants Nos. 2 and 3 under two deeds of mortgage, the first of 1917 and the second of 1920.

2. The plaintiff, as the purchaser of the trees, alleging a right to redeem, filed the present suit, inter alia, for redemption of the Tiruvottiyur garden (land as well as trees), on payment of Rs. 5,000 a part of the mortgage amount secured by the second mortgage.

3. In regard to this relief, the plaintiff's case was, that although the first of the mortgages was for Rs. 19,000 and the second was for Rs. 14,500 there was a clause in the second deed, which empowered him to redeem the mofussil property alone, on payment of Rs. 5,000. Thus it will be seen, that the relief he claimed was, in respect of the property outside the city of Madras; but curiously enough the plaintiff under some mistake applied for leave to institute the suit in this Court and he seems to have obtained it. The leave was, of course, applied for and granted, on the footing, that some portion of the property covered by the suit was within the jurisdiction of this Court, It now turns out that he was mistaken and took a wholly wrong view of the situation. The plaintiff having

realised his mistake has now asked me to allow him to amend his plaint. He seeks to amend it in this way. He desires, on payment of the whole amount due, to redeem all the properties comprised in the two mortgages--properties situated at Tiruvottiyur as well as at Madras. If this was the original frame of the suit, there could have been no objection on the ground of jurisdiction. The question is, can I now allow the plaint to be amended ? For the defendants, it is urged that the Court not having initially jurisdiction, no order can be made in such a suit, for, it is said, when a Court cannot try a case for want of jurisdiction, it stands to reason that in such a suit it can make no valid order. It seems to me that this contention is sound in principle, as it is logical to hold, that when the Court has no right to try the case itself, it cannot give directions in that very suit, which can be done only on the assumption, that the Court is lawfully seized of that action. Not only is this sound in principle but such authority, as I find, seems to support this view. In *Mahalingam v. Natesa Aiyar* 32 Ind. Cas. 423; 3 L. W. 107; (1916) 1 M. W. N. 146 Seshagiri Aiyar, J. was of this opinion, although as the case could be decided on another ground, Sir John Wallis, C. J. expressed no opinion on the point. In *Kannusami Pillai and Another Vs. Jagathambal*, the point was discussed at some length by Sadasiva Aiyar, J., who takes this view, although Old field, J., was content to rest his judgment on another ground. The same point was again considered by Sadasiva Aiyar, J., in *Govindaswami Kadavarani v. Kaliaperumal Munayathiriyar* 66 Ind. Cas. 837; (1982) M. W. N. 83; 16 L. W. 155 and that learned Judge reiterated his previous view, although in the circumstances of that case, Coutts Trotter, J., (as he then was) was not disposed to agree with Sadasiva Aiyar, J. It was a case relating to reliefs u/s 92 of the Civil Procedure Code, which could not have been filed in a

4. District Munsiff's Court. The suit was, however, filed in such a Court and the reliefs comprised not only those obnoxious to Section 92 but other reliefs as well. The plaintiff abandoned the reliefs that fell u/s 92 and the parties entered into a compromise in regard to the other reliefs only; and the question arose, could the District Munsiff give effect to that compromise? This case is clearly distinguishable from the present, for, under Order XXIII, Rule 1, Civil Procedure Code, the plaintiff may, at any time, after the institution of the suit, abandon a part of his claim. This is exactly what the plaintiff in that case did. The Court in such cases is not called on to give any direction. It is left to the plaintiff's option to abandon a part of his claim and, if he chooses to pursue that course, the Court cannot prevent him from doing so. It is no concern of the, Court at all and it is not called on to make any order. It is the act of the plaintiff and the plaintiff alone and the Court takes no part in it. In such a case, therefore, it cannot be said that the Court is making any order, and this, therefore, does not contravene the rule "that the Court cannot make a valid order in a suit which it cannot try for want of jurisdiction. Although Coutts Trotter, J, did not in his judgment refer to Order XXIII, Rule 1, Civil Procedure Code, his conclusion, if I may say so with great respect, is correct, in view of this provision, and the decision in that case does not bear on the point with which I am dealing. These are the only cases on

the point; but there is also a section in the CPC which throws a great light on the question, Section 35 which deals with costs, after saying, that the Court shall have full power to determine by whom or from what property and to what extent, costs are to be paid, adds significantly; "the fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers." This clearly suggests that, but for that provision, the Court would have no power to make an order in a case over which it has no jurisdiction. I have, therefore, come to the conclusion that the amendment cannot be allowed and the application is, therefore, dismissed. I am asked to make it clear that I have dealt with no other point than that of jurisdiction. It also follows that the suit itself is incompetent and it stands dismissed with costs of defendants Nos. 2 and 3 (one set.)