
(1935) 02 MAD CK 0016
In the Madras High Court

Puthipadath alias Vedakke, Pottu Kelathila alias Clakkingal
Karthiyayini Ammal's daughter Kochu Kutty Amma alias
Narayani Amma affected by mental infirmity and idiocy by
next friend Pandarathil Sivaraman Menon

APPELLANT

Vs

Moothirangot alias Parattipalli Menakkal Bhavathirthan
Nambudripad's son Subramanian Nambudripad and Another

RESPONDENT

Date of Decision : 12-02-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1935) 69 MLJ 75

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The present suit was brought upon a mortgage and a decree was passed against the first defendant described as the

Karnavastri and also against her daughter the second defendant. These two persons, it is alleged, are the only members of the tarwad. The Civil

Revision Petition arises out of an application made after the decree on behalf of the second defendant. It is said that, at the time of the passing of

the decree and long previous to it, she was a lunatic and that the decree as against her should therefore be disregarded; on this ground the lower

Court was requested to revive the suit and proceed with it after appointing a suitable guardian for her.

2. The learned Subordinate Judge has misunderstood the nature of the application. The Court that passed the decree happened also to be the

Court that was executing it. The learned Judge thought that the application was made to the executing Court, whereas in truth it was made to the

Court that passed the decree. The ground of his decision that the executing

Court cannot go behind the decree is therefore wrong. But it seems to me that, although the lower Court's reasoning is wrong, its conclusion must be supported.

3. The question shortly is, has a case been made out for the exercise by the Court of its inherent powers u/s 151, Civil Procedure Code? It is not

and cannot be disputed that the second defendant has another remedy open to her, namely, of impeaching the decree by filing a regular suit. See

Kalipada Sarkar v. Hari Mohan Dalal I.L.R.(1916) 44 Cal. 627 Mr. Kutti Krishna Menon relies upon some cases, where on its being found that

the decree was inoperative having been passed against a minor, the suit on the plaintiff's application was revived. Bhagawan Dayal v. Param Sukh

Das I.L.R.(1916) 39 All. 8 Kirpa Kishan Kishori v. Babu Lal I.L.R.(1923) 45 All. 606 and Talib Ali Shah v. Piarey Lal I.L.R.(1430) 52 All. 924.

In Samaresh Chakravarti v. Jalpaiguri Banking and Trading Corporation, Ltd. 34 C.W.N. 989 the defendant was a lunatic and there too, the

party, at whose instance the case was revived, was the plaintiff. As Mr. Govinda Menon points out, those cases are distinguishable. The appli

cation here is made by the defendant to whom there is another remedy open. Moreover, cases may be conceived where, after it is discovered that

the defendant is a minor or a lunatic, the plaintiff may not care to remove and proceed with the action; he may be content to treat the decree as a

nullity and there is no reason why he should at the defendant's instance be compelled to revive his suit. The cases cited by the petitioner's Counsel

have therefore no direct bearing.

4. The fact that there is another remedy available is not necessarily a ground for refusing to exercise the inherent powers u/s 151, Perumal Moopan

Vs. M.K. Venkatachariar B.A. The Assistant Registrar of Co-operative Credit Society and Liquidator of Cooperative Credit Society, . But the

question is, whether in the circumstances here it is necessary in the interests of justice that the Court should exercise its inherent powers. In the

three Allahabad cases cited by the petitioner's Counsel, a finding had already been reached that the defendant was a minor and was not properly

represented in the action; in the other case relied upon by him, namely, Samaresh Chakravarti v. Jalpaiguri Banking and Trading Corporation, Ltd.

34 C.W.N. 989 the fact that the defendant was a lunatic was admitted. In the

present case, the allegations are that almost from her infancy the second defendant was a lunatic, and that several transactions into which she had entered culminating in the suit mortgage for about Rs. 45,000 are

not binding upon her. When the decree is impeached on such allegations as these it is but proper that the party should be referred to a regular suit.

5. I therefore hold that the lower Court's order is right. The Civil Revision Petition fails and is dismissed with costs. Counsel's fee is fixed at Rs.

25.