
(1935) 02 MAD CK 0074

In the Madras High Court

Puthupadath Kochu Kutty Amma (affected by mental infirmity and idiocy), by next friend, Pandarathil Sivaraman Menon

APPELLANT

Vs

Subramanian Nambudripad and Another

RESPONDENT

Date of Decision : 12-02-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1935 Mad 753 : 160 Ind. Cas. 676

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 defendant 1 described as the karnwastri and also against her daughter defendant 2. These two persons, it is alleged, are the only members of the tarwad. The revision petition arises out of an application made after the decree on behalf of defendant 2. It is said that, at the time of passing 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.

5. The 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 P.C.? It is not and cannot be disputed that defendant 2 has another remedy open to her, namely of impeaching the decree by filing a regular suit: see *Kalikpada Sirkar v. Hari Mohan Dalal* 1917 Cal.

844 . Mr. Kuttikrishna 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. Paramsukh Das 1917 All. 477, Kripakishon Kishori v. Babu Lal 1924 All. 225 and Talib Ali Shah v. Piarey Lal 1930 All. 644. In Samaresh Chakravarthi v. Jalpaguri Banking and Trading Corporation 1931 Cal. 168, 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 application 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 has 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 v. Venkatachariar 1922 Mad. 193. 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 Chakravarthi v. Jalpaguri Banking and Trading Corporation 1931 Cal. 168, the fact that the defendant was a lunatic was admitted. In the present case, the allegations are that almost from her infancy defendant 2 was a lunatic and that the several transactions into which she had entered culminating in the suit mortgage for about Rupees 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. I therefore hold that the lower Court's order is right. The revision petition is dismissed with costs. Counsel's fee is fixed at Rs. 25.