

(1926) 12 MAD CK 0022
In the Madras High Court

(Putta) Yarramma

APPELLANT

Vs

Kala Venkamma and Others

RESPONDENT

Date of Decision : 09-12-1926

Acts Referred:

Citation : AIR 1927 Mad 659 : 101 Ind. Cas. 165

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The plaintiff sues for a declaration that the decree in O. S No. 606 of 1915 and the sale under that decree are void and

illegal inasmuch as she was not a party to the suit. It is found by the lower appellate Court that the plaintiff was only a benamidar for her son who

was impleaded as a party to the suit O. S. No. 606 of 1915, and all the properties which stood in the name of the plaintiff, his mother, were

mentioned in the schedule to the plaint" in O. S. No. 606 of 1915 against which relief was asked for. It was the duty of the plaintiff to have

pleaded specifically that those items were hers and she not being party they should not be proceeded against. What Mr. Suryanarayana now

contends is that she thought the property was hers and she not being a party to the suit, no decree should be passed against her property. But

unfortunately for her the finding now is she was only a benamidar for her son who was the 3rd defendant in that case. If the plaintiff is able to make

out successfully that the property is hers and not her son's no doubt she would have a good case, but the finding is that she was only a benamidar

and the property really belonged to the 3rd defendant. That being so, she cannot now come forward and say that the properties standing in her

name which really belonged to her son should not have been proceeded with in execution of the decree in O. S. No. 606 of 1915. I think the

Subordinate Judge's judgment is correct. The second appeal fails and is dismissed with costs. The memorandum of objections is dismissed with costs.