

(1939) 08 MAD CK 0010
In the Madras High Court

P.V. Karuppanan Ambalam

APPELLANT

Vs

Pandari Sundara Raja Aiyar

RESPONDENT

Date of Decision : 08-08-1939

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : AIR 1940 Mad 71 : (1939) 50 LW 611 : (1939) 2 MLJ 645

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—This appeal arises out of a suit brought by the respondent for a permanent injunction restraining the appellant from

interfering with his enjoyment of the suit property and, in case it was found that the respondent was not in possession, for delivery of possession

free from the obstruction of the appellant. The respondent claimed title under an Inam grant alleged to have been made to his predecessors-in-title

by the Carnatic rulers for the supply of Tulasi to the Kallalagar Devasthanam in the Madura District. The respondent also alleged that in or about

the year 1918 the trustees of Ramalingaswami Mutt falsely set up title to the suit properties and it the instance of some mediators, the dispute with

them was settled by the trustees giving what is described as a release sale deed relinquishing all their interest in the suit properties, and recognising

the respondent's title thereto. Since then, the respondent claimed to have been in possession and enjoyment of the suit properties down to the year

1933 when the appellant disturbed his possession under colour of a sale deed obtained by him from one Singaram Pillai. The appellant denied the

title as well as the possession put forward by the respondent and pleaded that the property originally belonged to one Narayana Paradesi from

whose successor-in-title he obtained the property by sale deed dated 14th February, 1933.

2. The trial Court found that the Inam grant put forward by the respondent related only to the Melwaram interest in the land but that he acquired

the right to the land itself by virtue of the release deed executed by the trustees of Ramalingaswami Mutt and thus became the full owner of the suit

property. As regards the respondent's possession, he held that the evidence on record was not sufficient to establish an acquisition of title by the

respondent by adverse possession if the respondent was held to have no title otherwise.

3. On appeal the learned District Judge confirmed the finding of the District Munsif that the Inam grant was only of the Melwaram but disagreed

with him on the question of the respondent's title. He held that the release deed Ex. B could not confer a valid title on the respondent because only

two out of the four trustees of the Mutt executed it, and besides it was not shown to have been "executed for any necessary purpose binding on

the Mutt. He, however, held that the respondent got possession of the properties under Ex. B and continued in possession till he was disturbed in

such possession by the appellant in 1933 and that the respondent was entitled to a decree on the basis of his possession irrespective of any

question of title. As the Mutt was not a party to the suit, the learned Judge thought it was unnecessary to decide whether the respondent had

acquired title by adverse possession against the Mutt.

4. The learned Counsel for the appellant raised two contentions before me. First he urged that when a plaintiff bases his suit on title, he cannot

claim relief on the strength of his mere anterior possession even alternatively; he could rely upon possession only as evidence of the title put

forward by him but not as an independent ground of claim by itself. For this somewhat startling proposition, he relied upon a decision of the

Bombay High Court, *Govindbhai v. Dahyabhahi* (1935) 38 Bom. L.R. 175 : I.A.R. 1936 Bom. 201. There the trial Court found that the plaintiff in

that case had more or less a precarious possession for a short period and it was with reference to that finding which the learned Judges described

as tentative that they made their observations at page 208 of the report. I do not understand that decision as laying down what in effect would be a

new rule of misjoinder not warranted by the provisions of the Code of Civil Procedure.

5. The learned Counsel next contended that even if it is permissible to put forward mere previous possession as a ground of claim, in the

alternative, in a suit based primarily upon title, no such case having been expressly set up by the respondent in this case in his plaint, the learned

District Judge erred in law in granting the respondent a decree on the basis of his prior possession after negating the title that was specifically set

up. The learned Counsel cited in support of his proposition *Maikal Servai v. Thambuswamy Servai* (1914) M.W.N. 784, *Somasundaram Chetty*

v. Vadivelu Pillai I.L.R.(1908) 31 Mad. 531, *Venkatasami Naick v. Kali Samatan* (1916) M.W.N. 110, *Ramalinga Pandaram v. Anthonimuthu*

Vathiar (1933) 66 M.L.J. 358 and certain other decisions more or less to the same effect. In some of these cases, the suits were no doubt

dismissed on the ground, that the title set up by the plaintiff was not established, and that no decree could be granted on the strength of mere

possession as no possessory title had been put forward in the plaint. But I do not regard these decisions as laying down an inflexible rule that under

no circumstances can a decree be passed on the strength of plaintiff's possession unless such possession is specifically made the ground of relief in

the plaint. I regard them merely as illustrations of the salutary principle that parties should ordinarily be confined to the case raised by them in their

pleadings and that no relief should be awarded on the basis of a new case not disclosed in the pleadings. The underlying principle is, of course, that

no party should be taken by surprise but should have a fair and adequate opportunity to meet the case of his opponent. Judged by this principle, it

cannot be said in this case that the appellant was prejudiced to any extent by any new case being sprung upon him without any previous indication

thereof in the plaint. In paragraphs 7 and 8 of the plaint, after referring to the release deed by the trustees of the Mutt and delivery of possession by

them, the respondent definitely and clearly alleged:

From that time till this day, the plaintiff himself is enjoying the suit land and is paying the kist, etc., due thereon. The patta also has been registered in

his name. Nobody else had, at any time, any right to, or enjoyment of, the said land.

6. And the appellant, in paragraph 8 of his written statement, traversed these allegations and Issue 5 and the additional Issue, relating to the

respondent's acquisition of title by adverse possession and his having been in possession within 1.2 years before the suit, also clearly raised the

question of the respondent's possession of the suit property. Evidence was let in by both the parties on these issues and the matter also was

elaborately considered by both the Courts below. In these circumstances, I am unable to see any ground for complaint that the appellant was

prejudiced by the decree having been passed on a new case which the appellant had no sufficient opportunity to meet.

7. The respondent's learned Counsel has drawn my attention to a decision of the Privy Council in (1893) ILR 20 834 (Privy Council) , where

also, as far as could be seen from the summary of the plaintiff's case in their Lordships' judgment, the suit had been based upon the plaintiff's title

and no mere possessory title had been specifically put forward as such. But allegations of possession by the plaintiff and his predecessors-in

interest had, of course, been made. The High Court refused to declare the plaintiff's title u/s 42 of the Specific Relief Act, though they found that

the plaintiff was actually in possession for over six years prior to the suit. But their Lordships reversed the decision of the High Court and granted a

declaration of the plaintiff's title on the strength of his possession alone, leaving the question of the plaintiff's title undecided.

8. I am therefore of opinion that the decree of the lower Court was rightly made and this appeal should be dismissed with costs.

9. Leave refused.