

(1898) 03 MAD CK 0004
In the Madras High Court

Ramasami Aiyar and Another

APPELLANT

Vs

Annasami Aiyar and Others

RESPONDENT

Date of Decision : 10-03-1898

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : (1898) 8 MLJ 124

Judgement

1. Objection is taken to the frame of the suit on the ground that the appellants are still in possession of the jewels and other temple property.

Indeed an admission was made to that effect in the Court below (see paragraph 26 of the judgment). It is said on the respondents' behalf that

although the appellants are in possession the respondents are also in possession as trustees. This may be so; though it is not admitted, but it is none

the less true that the respondents are entitled to further relief than a mere declaration of title. It follows, having regard to the provision of the

Specific Relief Act, Section 42, that the suit for a declaration cannot lie. It is further argued, that the plaint can be sustained in so far as it asks for

an injunction, But, in our opinion, an injunction is not the appropriate remedy. The respondents really want more than an injunction, they want the

positive relief which a decree in ejectment gives. It would be futile to give the respondents a merely prohibitory injunction which, is all that they ask

for, for the result would be to leave unsettled the real question at issue between the parties. Moreover, to grant to plaintiffs in the position of the

respondents relief such as is asked for in this suit would be to allow them to obtain by a side wind the declaration which the law says they are not

entitled to have. The decree goes further than the plaint by directing the delivery up of all the temple property to the plaintiffs, showing clearly that,

in the opinion of the Court, it was all in the possession of the defendants. It is to be regretted that the issue was not framed in such a way as to

bring out the real question which had to be tried. We must reverse the decree and dismiss the suit with costs throughout.