

(1946) 02 MAD CK 0029
In the Madras High Court

Reddem Babi Reddi and Another

APPELLANT

Vs

Vadla Veerayya and Others

RESPONDENT

Date of Decision : 28-02-1946

Acts Referred:

Citation : (1946) 59 LW 327 : (1946) 1 MLJ 409

Hon'ble Judges : Rajamannar, J

Bench : Division Bench

Judgement

Rajamannar, J.—This second appeal arises out of a suit filed by the respondents in the Court of the District Munsiff of Anantapur for a declaration of their right to the suit property. The plaintiffs claimed under a sale deed dated 10th June, 1940, from one Gangamma and Basanna. The appellants resisted the suit, claiming title to the property under a sale deed from the third defendant.

2. Admittedly, the suit property originally belonged to one Gorba Ramayya, who died issueless. The two questions of fact which the lower Courts had to determine were (1) whether the plaintiffs' vendors had any title to the property and (2) whether the third defendant was entitled to the property. Both the Courts found that the third defendant's relationship with the deceased-Ramayya was not satisfactorily proved and that he could not be held entitled to the property as Ramayya's heir. Of the two vendors of the plaintiffs, it was conceded that the second vendor Basanna had no right to the property. But the plaintiffs contended that Gangamma, as the widow of the brother of Ramayya, was entitled to succeed. The learned District Munsiff of Anantapur accepted this contention and decreed the suit. On appeal, the learned District Judge of Anantapur held--and held rightly--that Gangamma, as the widow of the brother of Ramayya, was not entitled to succeed as a heir. The result was that neither of the vendors of the plaintiffs had any title to convey to the plaintiffs.

3. On this finding, the learned District Judge ought to have dismissed the suit. He however granted a decree in these terms:

There will be a declaration that they (plaintiffs) are entitled to possession of it(the suit property), though they are not the owners, until such time as they are ousted in due course of law by the person entitled to possession by virtue of title to the property.

It may be mentioned that on the date of the institution of the suit, the suit property was under attachment u/s 146(1) of the Code of Criminal Procedure in pursuance of an order passed by the Joint Magistrate, Penukonda, on the 5th of February, 1941. That order was passed because the Magistrate found that it was difficult for him to decide as to who had been in possession of the property. It is significant to note that in the plaint the plaintiffs, apart from claiming a declaration of their right to the suit property on the ground that they were entitled to it, did not specifically put forward any case based on their possession. Nor did they claim a lesser relief similar to that granted by the learned District Judge. In the trial Court, no issue was raised with regard to possession. In these circumstances it was not open to the learned District Judge to have granted even the limited relief which he did grant on the ground that it was reasonably established that the possession of the property after Ramayya's death was with Gangamma and that after the sale it was with the plaintiffs. The appellants were not apprised of this case by the allegation in the plaint and the issues framed on the pleadings. The decision of a Division Bench of this Court in Maikal Servai v. Thambuswami Servai (1914) 25 I.C. 934 relied on by the learned advocate for the appellants, appears to govern the facts of this case. The learned Judges observe:

No doubt a suit is maintainable on such a basis (basis of possession) : but if plaintiff seeks to rely on it, it should be clearly set up so that the contesting defendants may know what they have to meet. There is no indication of such a claim in the plaint, which, as already stated, bases the suit on title by inheritance and nothing else ... We consider, following Somasundaram Chettiar v. Vadivelu Pillai (1914) 25 I.C. 934 and Sairo Kumari Debi v. Govind Shaw Tanti I.L.R. (1887) Cal. 418 that plaintiff should not have been given a decree on the basis of a claim not set up in the plaint or raised in the issues.

4. The second appeal is allowed and the suit is dismissed with costs throughout.