

(1909) 10 MAD CK 0070
In the Madras High Court

R.G. Orr and Another

APPELLANT

Vs

R.M.M.S.T.Y.O. Chidambaram Chettiar (since deceased) and
Others

RESPONDENT

Date of Decision : 07-10-1909

Acts Referred:

Citation : (1910) 20 MLJ 36

Judgement

1. This is an interpleader suit which has been dismissed by the Subordinate Judge as not sustainable in law. The plaintiffs appeal against this dismissal, and we think the appeal is well founded.

2. For the purposes of this appeal it is sufficient to state the following facts. The late Zemindar of Shivaganga granted a perpetual lease of certain villages to his wife, Raku Nachiar, in 1887. Subsequently in the same year, he leased to the plaintiffs, for a long term of years, the whole Zemindari excluding the villages already leased to his wife and other relations. In 1889 Raku Nachiar gave a sub-lease of five of her villages to the plaintiffs for 29 years on a rent of Rs. 10,000 a year, and put the plaintiffs in possession receiving the rent in advance up to June 1900.

3. Raku Nachiar died in 1892, leaving her surviving four daughters who are defendants Nos. 3 to 6 and an adopted son. In 1898 the Zamindar died, and his adopted son (7th defendant) became the minor Zamindar. In O.S. No. 18 of 1901 the 6th defendant and one Ramanathan Chetti the late father of the defendants Nos. 1 and 2, to whom the 6th defendants had leased the above five villages sued to recover them from the defendants Nos. 3 to 5 and the 7th defendant put in a petition stating that the villages belonged to him and claiming to be made a party, but his petition to be made a party was dismissed. In March 1902 the parties to O.S. No. 18 of 1901 entered into a compromise, and in pursuance of it gave notice to the plaintiffs that the plaintiffs should pay the rent of the five villages in future to Ramanathan Chetti, the father of defendants Nos. 1 and 2.

4. On the 22nd of June in the same year the Court of Wards, as guardian of the

minor Zamindar (the 7th defendant) also gave notice to the plaintiffs stating that the leases executed in 1887 by the late Zamindar in favor of Raku Nachiar were colorable transactions executed by him benami in the name of his wife, but for his (the late Zamindar's) benefit and that the lease of the five villages granted by her to the plaintiffs in 1889 was for the benefit of the late Zamindar and requiring the plaintiffs to pay the rents of the villages to the Court of Wards on account of the minor Zamindar. In these circumstances the plaintiffs, not knowing whether they should pay the rent to the defendants Nos. 1 to 6 or to the 7th defendant filed this interpleader suit and deposited in Court the rent flue Rs. (56,060).

5. The Subordinate Judge having held that the suit was unsustainable with reference to the provisions of Section 474, CPC (Act XIV of 1882) the plaintiffs appeal.

6. The Vakil for the defendants Nos. 1 to 6 takes the preliminary objection that the order of the Subordinate Judge dismissing the suit is not one of the orders in the interpleader suits against which an appeal is provided for in Clause 23, Section 588, of the Code of Civil Procedure, nor is it a decree within the definition of Section 2 of the Code. We think the latter contention is not sustainable. The order of the Subordinate Judge was the formal expression of his adjudication on the defence set up in the suit and it decided the suit so far as the Subordinate Judge was concerned. It is therefore a decree within the meaning of Section 2 of the Code. We disallow the objection.

7. The main reason given by the Subordinate Judge for holding that an interpleader suit will not lie on the facts stated in this case, is that Section 474, Civil Procedure Code, expressly prohibits a tenant from suing his landlord for the purpose of compelling the landlord to interplead with any person other than a person making claim "through the landlord," and he considered that in the present case the 7th defendant could not be said to claim through Raku Nachiar (the landlord under whom the plaintiffs held) but must be regarded as claiming adversely to her. He also dwelt on various circumstances which, in his view, went to show that the 7th defendant's plea of benami was not true and on the argument that the lease of the plaint villages having been given with the late Zamindar's consent, the 7th defendant would be estopped from again demanding from the plaintiffs any rent paid by them to Raku Nachiar's representatives, defendants No. 1 to 6. Whatever might be the case with regard to payments made bona fide before the plaintiffs had notice of the 7th defendant's claim, it is difficult to see how the plaintiffs would be protected if they wrongly paid away the rents after notice of his claim; and in the case of *Stuart v. Welch* (1839) 41 E.R. 119 the Lord Chancellor, referring to the case of *Nickolson v. Knowles* (1820) 56 E.R. 812 stated that the authorities at law shew that Sir J. Leach was not warranted in refusing the injunction upon the ground that the case of the party giving the notice was so clearly unfounded as not to entitle the plaintiff to have it tried. In the present case the Court of Wards has

made a formal claim to the rent of the plaint villages on behalf of the 7th defendant and we must proceed to deal with the question of interpleader without reference to any alleged weakness in his case. We must, in fact, decide the question on the supposition that the case put forward by him is, or may be true. If that case is true, then Raku Nachiar was in the position of a trustee for the real owner, who was the Zemindar, and the defendants Nos. 1 to 6, who claim as her heirs, are trustees for the 7th defendant, who is now the Zemindar. No doubt the general rule of English Law is that an interpleader suit will only be maintainable if the landlord, subsequent to the letting, has done some act whereby his right to recover the rent is entangled--Cook v. The Earl of Rosslyn (1859) 65 E.R. 871 but there are exceptions to this rule. In the case of Dungey v. Angove (1794) 30 E.R. 644 the Solicitor-General referred to the case of Wood v. Kaye tried before Lord Thurlow and said : " A house was devised to trustees for the separate use of Mrs. Kaye with a provision for the rent to be paid to the person to whom she should give a letter of attorney. The trustees not acting, Mr. and Mrs. Kaye entered. In 1783 they executed a lease to Wood for 7 years, if she should so long live. In 1787 the trustees, at the instigation of her son, insisted that as the estate was devised to them, they had a right to receive the rent and apply it to answer repairs on other parts of the estate, and they gave notice to the tenant not to pay. In consequence of his refusal the lessor proceeded upon the lease; and the tenant filed a bill." It was insisted, as it is now, that a person who had taken a lease from another, could not file such a bill. The Lord Chancellor said, it would be the most detrimental thing to the public and to tenants; because nothing can be more material than that tenants shall be safe in the occupation of the estate; that if a landlord has a complete title he may indemnify them; but that if he does not take care of the defence the consequence is the tenant has a right " to come into equity,"" and the Lord Chancellor, after expressing his concurrence with the decision in Wood v. Kaye said: "The title of the trustees was derivative from that of the cestui qui trust and was consistent with it. The tenant did not come to disavow the title of the landlord. It was a question between the trustees and the cestui qui trust with which the tenant had nothing to do"-30 English Reports 644 at p. 646. The principle of that case seems to us to be applicable to the present case. According to the allegations of the 7th defendant the title of Raku Nachiar (and of defendants Nos. 1 to 6) was derivative from the Zemmdar and was consistent with it. The plaintiffs do not deny the title of Raku Nachiar to grant them the lease, but they do not know whether she did so in her own right or benami for the Zemindar. The plaintiffs have no interest in the matter except to be protected from being made to pay the rent twice over. The 7th defendant does not deny the title of Raku Nachiar to grant the lease. He affirms it, but says that it was granted on his father's behalf, and he has now succeeded to his father's rights. Then it was argued that Section 474, C.P.C., which contains the rule applicable to the Courts in India, is narrower than the rules deducible from the English cases and forbids a tenant to sue to compel his landlord to interplead with any person other than a person making claim though such landlord. We must therefore see whether the 7th defendant makes claim

through Raku Nachiar and it is not difficult to hold that he does so. What he says is that Raku Nachiar was entitled by arrangement with her husband to hold the position of the landlord and what he claims is the right to stand in her shoes. In other words he makes claim through her when he claims to occupy as between himself and the plaintiffs, the same position which she occupied. So far as the plaintiffs are concerned, the 7th defendant does not claim any right different from that of Raku Nachiar. He no doubt claims the right when he received the rent to appropriate to himself as being the owner of the land, and denies that Raku Nachiar held that position, but that claim makes no difference so far as the plaintiffs are concerned. As against them the claim of the 7th defendant is simply to occupy the position of Raku Nachiar. He claims to be the landlord by reason of the lease executed by her, and so he claims through her. For these reasons we think it is open to the plaintiffs to maintain this interpleader suit. We accordingly set aside the decree of the Subordinate Judge, and remand the suit for disposal according to law. Appellants will have their costs both in this and in the lower Court. Costs of the other parties will be provided for in the fresh decree of the lower Court.