
(1916) 04 MAD CK 0050
In the Madras High Court

Selambayi

APPELLANT

Vs

Sangu Pandithan and Others

RESPONDENT

Date of Decision : 14-04-1916

Acts Referred:

Citation : 35 Ind. Cas. 147 : (1916) 3 LW 542

Hon'ble Judges : Sadasiva Aiyar, J;Bakewell, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—Following Ahmad Sahib Shutari v. Magnesite Syndicate, Ltd. 29 Ind. Cas. 60 : 28 M.L.J. 598 : 2 L.W. 460 : 17 M.L.T. 387 I would hold that even if the plaintiff is not the sole owner of the plaint property, she is entitled to maintain her suit for an injunction against intending trespassers without joining her alleged co-owner or co-owners as parties, especially if she has been in sole actual possession, as found by the District Munsif, and was in such sole actual possession when the trespass was threatened and when the suit was brought. Mr. Thirunarayanachariar for the defendants drew our attention to certain authorities laying down that one of several co-parceners who inherited the plaint property as co-heir cannot maintain what is known as a "real" action in English Law even against trespassers without joining his co-owners. In the first place, the present action for injunction is not a "real" action. In the second place, I am not prepared to bring unnecessary distinctions between the rules of procedure in "real" and "personal" actions from the English Law into Indian Courts. Lastly, the rule as to several "heirs" of a deceased owner taking as one "heir" known to English Law is not, in my opinion, followed in either the Muhammadan or the Hindu systems of Law.

2. I might also refer to the case of Pateswari Pratap Narain Singh v. Budra Narain Singh 1 A.L.J. 543 : A.W.N. (1904) 119 : 26 A. 528 where it was held that one member of a joint Hindu family can maintain a suit in ejectment (a "real" action) against trespassers though he did not sue as manager of the family.

3. I would, therefore, set aside the judgment of the lower Appellate Court which

dismissed the suit on the preliminary ground of non-joinder of parties, and direct that Court to rehear the appeal presented to it and pass fresh decision; costs to abide.

Bakewell, J.

4. The findings of the District Munsif are that plaintiff was in possession of certain property and defendants were trespassers thereon. On these findings, I think that plaintiff's possession was sufficient to sustain her suit, and that the trespassers should not have been allowed to raise any plea as to her title.

5. I agree with the order proposed by my learned brother.