
(1940) 05 MAD CK 0012
In the Madras High Court

Sri Rajah Yenumala Latchanna Dora Varu	APPELLANT
Vs	
Sri Rajah Yenumala Mallu Dora Varu	RESPONDENT

Date of Decision : 01-05-1940

Acts Referred:

Citation : AIR 1941 Mad 55 : (1940) 52 LW 487 : (1940) 2 MLJ 572

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The plaintiff brought the present suit against his brother and his father for the B schedule properties which, he said, were allotted

to him in accordance with an agreement. In the alternative, he prayed for partition. The defendant's case is that the property is for the most part his

self-acquired property and that the only property to which the plaintiff is entitled is that in Schedule I. During the pendency of the suit the plaintiff

made an application to the Court for an interim maintenance of Rs. 800 a month. The learned District, Judge has awarded Rs. 250 a month.

2. The plaintiff is not entitled to an order of the nature passed. In Maharaj Kumar Gopal Saran Narayan Singh v. Sita Debi (1923) 77 I.C. 718, a

Divisional Bench of the Patna High Court held that a Court has no inherent power u/s 151" to pass such an order. That case was very like the

present, in that the plaintiff sued on a maintenance agreement, and only differed from it in that the defendant there did not admit that the plaintiff was

entitled to anything. Here, the defendant does admit that the plaintiff is entitled to something; but he does not admit that the plaintiff is entitled to any

part of the land that he claims. Jackson, J., in C.R.P. No. 1312 of 1930, quotes Maharaj Kumar Gopal Saran Narayan Singh v. Sita Debi (1923)

77 I.C. 718, as an authority for the position that the Court has no inherent power u/s 151 to pass an interim order of maintenance and pertinently

adds that:

A Court cannot interfere with a private person's property merely because he happens to be a defendant on behalf of another person merely

because he happens to be a plaintiff. There is no inherent power in a Court to act without findings, so that if a matter is asserted by the plaintiff and

denied by the defendant, the Court cannot presume that the plaintiff's allegations are true and give some interim relief pending disposal of the suit.

3. In the face of the above decisions, I do not feel justified in taking into account the document in the plaintiff's favour, the validity of which is

denied by the defendant. The defendant does however admit that the plaintiff is entitled to some property, but it would be inconvenient, I consider,

during the pendency of this suit which, I hope, will not be very much longer, to compel the plaintiff to take possession of property which he does

not claim and with regard to which he may have some difficulty in collecting rent. Some maintenance in proportion to the property admittedly

belonging to the plaintiff can be given; and I think the fairest course would be to reduce the amount granted to the plaintiff by the lower Court to

Rs. 50 a month from the date of the last payment. If it is subsequently found that Rs. 50 a month is in excess of the mesne profits from the land to

which the Court finds the plaintiff is entitled, the excess will be charged on the land awarded to the plaintiff.

4. The petition is allowed to the extent indicated. There will be no order as to costs.

5. A memorandum of cross-objections has been filed asking for an enhancement of the allowance. This has to be dismissed, whether on the

ground that the plaintiff cannot be given even as much as was granted by the lower Court or on the ground that a memorandum of cross-objections

cannot be filed in a revision petition. It could no doubt be treated as a revision petition if it had been filed within three months from the date of the

passing of the order. Apparently this was not done. The memorandum has not been argued and it is not necessary to pass any order as to costs.

The trial Court should expedite the disposal of the suit.