
(1909) 08 MAD CK 0020
In the Madras High Court

Sundara Bai Sahiba

APPELLANT

Vs

Tirumala Rao Sahib and Another

RESPONDENT

Date of Decision : 25-08-1909

Acts Referred:

Citation : (1910) ILR (Mad) 131 : (1910) 20 MLJ 103

Judgement

1. The plaintiff, a widow, sues the defendants, her sons, for maintenance.
2. She prays that her maintenance may be charged on certain immovable property situated within the local limits of the Original Jurisdiction of the High Court.
3. Her suit is dismissed on the ground that the High Court had no jurisdiction to entertain the suit.
4. The question is whether the suit is ""for land within Clause 12 of the Letters Patent."" It is contended that suits for the recovery of possession alone fall within the clause. The High Court of Calcutta has held that suits to establish title to land, suits for foreclosure, sale, redemption, and suits for specific performance of contract for sale of land, are suits for land, and in a judgment in which the question was fully considered, Moore J. held that a suit for sale is a "" suit for land"", following certain Calcutta decisions"-see Nalum Lahshmikantum v. Krishnaswami Mudaliar ILR (1903) M. 157 and the Calcutta cases referred to therein; also The Delhi & London Bank v. Wordie ILR (1870) C. 249; Kellie v. Fraser ILR (1877) C. 445 Sreenath Roy v. Cally Doss Ghose ILR (1879) C. 82; Land Mortgage Bank v. Sudurudeen Ahmed ILR (1892) C. 358.
5. In Bombay, in the cases reported in Venkoba B. Kasar v. Rambhai Jvalad Arjun (1872) 9 Bom. H.C.R. 12, His Highness Shrimant Maharaj

jasvantrav Holkar v. Dadabhai Cursetji Ashburner ILR (1890) B. 353; the Judges took the contrary view, but in Sorabji v. Ratanji I.L.R (1898)

B. 701 at page 704, Strachey J. expressed his opinion that in the absence of authority on the point he should have had great difficulty in holding

that a suit for foreclosure is not a "suit for land." The authority of these decisions would be considerably shaken if they were not overruled by the

later decision in Vaghoji v. Camaji ILR (1904) B 249. The decisions of the Calcutta High Court are based on the ground that any suit in which a

decree is asked for, operating directly on the land, is a suit for land. This is in accordance with the principle that all questions relating to land should

ordinarily be decided by the Court within the limits of whose jurisdiction it lies. We are, therefore, inclined to hold that a suit which prays for any

relief with reference to any specific property is a suit for land. The plaintiff's right of maintenance is not merely a personal obligation. It is a real

right, but it is not a charge on any other proprietary right until it is referred to specific property by contract or decree.

6. Where, therefore, in a suit for maintenance the plaintiff only prays for a decree charging her maintenance on ancestral property without

specifying any particular portion of that property, the suit may not be a suit for land as she does not claim any relief against any specified property.

But where she claims to have her maintenance made a charge on specified Immovable property, we are of opinion that she prays for a decree to

operate directly on the land. The decree to be passed, if she succeeds, is a decree against that property. If the defendant fails to pay her decree

debt, it may be sold, if the decree is so framed, for the purpose of discharging the same.

7. We are, therefore, of opinion that the suit is "for land."

8. The only question that remains for consideration is the rate of maintenance. There is evidence that during her husband's lifetime the plaintiff was

living apart, and, under Exhibit C, she was to get for her maintenance a sum of Rupees 50 (fifty) a month. Since then she has become a widow.

The sum of Rs. 250 (two hundred and fifty) which the former Jaghirdar paid to the family has been reduced to Rs. 160 and there has been litigation

in which the members of the family were involved. Taking these circumstances and the state of the family into consideration, we think that

maintenance may be awarded at the rate of Rs. 40 a month. The plaintiff is also entitled to arrears of maintenance for 3 years prior to date of suit at that rate.

9. The maintenance accruing due from this date will be payable on or before the 10th of every month. We, therefore, pass a decree for

maintenance at the above rate and direct that such maintenance as well as arrears be made a charge, as prayed for, on the property specified in the plaint.

10. The arrears decreed will be paid in three equal installments the first instalment to be paid on or before the 15th November next, and the other installments at intervals of four months from that date. We further direct that on default the said property Sundara Bai may be sold in execution to discharge the amount due. Both Tirumala Rao parties will pay and receive proportionate costs throughout.