

(1917) 11 MAD CK 0063
In the Madras High Court

S.V. Sitaramaswamy

APPELLANT

Vs

Dulla Lakshmi Narasamma and Another

RESPONDENT

Date of Decision : 02-11-1917

Acts Referred:

Citation : (1918) ILR (Mad) 510 : 48 Ind. Cas. 840 : (1918) 8 LW 21

Hon'ble Judges : Seshagiri Aiyar, J; Napier, J

Bench : Division Bench

Judgement

1. Plaintiff, the mother, sued. her son, the defendant, for a declaration that the property in suit was her Stridhanam. The suit was first filed in the District Munsif's Court and, on objection being taken to valuation, it was returned for presentation to the Court of the Subordinate Judge and was tried in that Court, When the suit was in the Munsif's Court the defendant executed a mortgage in favour of the present appellant. The suit was decided by the Subordinate Judge in favour of the plaintiff. It is alleged that, while the son was taking steps to file an appeal, he colluded with his mother and gave up the idea of preferring an appeal. Thereupon the present appellant filed an application to the District Court under Order XXII, Rule 10, for an order that he be allowed to prefer an appeal, as the right to the property in suit devolved on him pending the suit. At the same time, he filed a memorandum of appeal against, the decree of the Subordinate Judge. On the application, the District Judge held that Order XXII, Rule 10, was not applicable and dismissed it. On the appeal, he held that his order on the application concluded the right of the appellant. Against these two decisions a civil miscellaneous appeal and a" second appeal have respectively been preferred.

2. As regards the dismissal of the application we agree with the conclusion of the District Judge, though not with the reasons given by him. He has relied on Seshagiri Row v. Velayudam Pillai 14 Ind. Cas. 157 for the proposition that the suit in the Munsif's Court was not continued in the Court of the Subordinate Judge. We reserve our opinion on the exact point decided in Seshagiri Row v. Velayudam Pillai 14 Ind. Cas. 157: (1912) M.W.N. 457. That decision is authority

only for the proposition that, for purposes of limitation, the suit in the Court of the Subordinate Judge was different from that which was first filed in the Munsif's Court. As at present advised, we are inclined to think that, where a plaint is returned for presentation to the proper Court, any devolution of interest which took place while the proceedings were pending in the first Court must be taken to be a devolution in the course of the suit which was subsequently tried in the second Court. But the order of the District Judge can be supported on the ground that when the appellant applied to the District Judge there was no suit pending. Order XXII, Rule 10, only governs applications made to continue a suit. Consequently the application presented after the termination of the suit was not within the rule. The recent decision of this Court in *Subba Pillai v. Rangasami* 40 Ind. Cas. 846 : (1917) M.W.N. 306 takes that view, which is also supported by *Collector of Muzoffarnagar v. Husaini Begam* (1895) A.W.N. 232 : 8 Ind. Dec. We agree with the view taken in these decisions. Following them, we hold that the District Judge was right in rejecting the application and we dismiss the civil miscellaneous appeal with costs.

3. The District Judge is clearly wrong in holding that the appeal failed by reason of his rejection of the application. Apparently his attention was not drawn to the provisions of Section 146 of the new Code of Civil Procedure. It is rather anomalous that if the person claiming under a party applied to continue the suit while it was pending, the Court had a discretion to permit him to do so or to refuse his application; the effect of Section 146 is to grant such a person an undeniable right to prefer the appeal which his assignor could have preferred. But the language of the section is clear and we are not at liberty to go behind its plain terms. The proceeding contemplated by the section would include an appeal and the expression "claiming under" is wide enough to cover cases of devolution, etc., mentioned in Order XXII, Rule 10. We, therefore, hold that the appellant was entitled to prefer the appeal to the District Judge. That appeal must now be heard on the merits. We reverse the decree of the District Judge and remand the appeal to him for disposal.

4. Costs of the second appeal will abide the result.