

(1920) 08 MAD CK 0054
In the Madras High Court

Thennutti Kallingal Vunni Moidin

APPELLANT

Vs

Thennutti Kallingal Vunni Moidin and Others

RESPONDENT

Date of Decision : 12-08-1920

Acts Referred:

Citation : 60 Ind. Cas. 109 : (1920) 12 LW 598 : (1920) 39 MLJ 626

Judgement

1. The plaintiff resisted the execution of a decree for possession of the suit lands and, having had an order made against him under Order 21, Rule 98, instituted the present suit under Rule 103 "to establish the right which he claims to the present possession of the property " failing which the right would have been lost under the terms of the rule. The plaintiff, who based his case both on possession and on title, alleged that the conveyance executed by him in 1899 in favour of the 1st defendant never took effect, and that, if it did, he had required a title by adverse possession before the date of the order against him under Rule 98. The District Munsiff dismissed the suit on the ground that the title passed to the 1st defendant by the conveyance of 1899. The Subordinate Judge allowed the appeal and decreed the suit, holding that the plaintiff having, as he found, been in possession at the date of the order under Rule 98, could not be ousted in execution of a decree to which he was not a party and that under the rule the Court was concerned with possession only. The view that in a suit of this kind the Court has merely to ascertain whether the plaintiff was in possession at the date of the order against him under Rule 98, is based on a misconception of the scope of the rules. If he was, then the Court ought not to have passed the summary order against him under Rule 98 but ought to have dismissed the decree-holder's application against him under Rule 99. The effect of the order having been made under Rule 98 was to oblige him to sue under Rule 103 on pain of losing his rights, whereas if the application had been dismissed under Rule 98 the decree-holder would have had to institute the suit under the like penalty. The suit referred to in the rule, by whichever party instituted, is a suit to establish the right which he claims to the present possession of the property. In a suit by the decree-holder if it were shown that the defendant was in possession at the

date of the order under Rule 99, the decree-holder could only succeed by proving his title, because a person in actual possession has a possessory title against the world and can only be dispossessed by the true owner and those claiming under him. So, too, in the present suit, if it be found that the plaintiff was in possession at the date of the summary order against him under Rule 98, he is entitled to succeed by virtue of that possession unless the defendant decree-holder proves a subsisting title carrying with it the right to present possession.

2. The object of these provisions is to secure the speedy settlement of questions of title raised in execution as explained by the Privy Council in *Sardhari Lal v. Ambika Pershad* 15 I.A. 123 with reference to the similar procedure prescribed with regard to claim petitions, and this is effected by requiring the unsuccessful party in the summary proceedings to file a suit within the year to establish his right on pain of losing it. In support of the Subordinate Judge's view reliance has been placed on the fact that the suit referred to in Rule 103 is a suit to establish the right which he claims to the present possession of the property, whereas the suit referred to in Rule 63 is a suit to establish the right which he claims to the property in dispute. This does not show that a suit under Rule 103 is concerned only with the question of actual possession at the date of the summary order. The suit is to establish the right which the plaintiff claims to the present possession of the property, and this right may be established without showing that the plaintiff was in actual possession at the date of the summary order against him. Decree-holders and auction-purchasers against whom an order has been made under Rule 99 are never in possession at the date of the summary order and yet they are allowed and even required to maintain the suit, and the scope of the suit must be the same whether the order against the unsuccessful party in the summary proceedings was made under Rules 98, 99, or 101. *Nabadwipendra Mookerjee v. Madhu Sudan Mandal* (1912) 16 I.C. 741 the only authority we have been referred to is in accordance with this view. The Subordinate Judge has not recorded any clear finding as to whether the plaintiff has established the right which he claims to the present possession and the decree must be reversed and the appeal remanded to the District Judge to enable him to do so in the light of the above observations.

3. Costs to abide.