

(1909) 07 MAD CK 0027
In the Madras High Court

Veera Pannadi

APPELLANT

Vs

Karuppa Pannadi and Others

RESPONDENT

Date of Decision : 13-07-1909

Acts Referred:

Transfer of Property Act, 1882 — Section 99

Citation : 2 Ind. Cas. 980

Hon'ble Judges : Ralph Benson, O.C.J.; Bakewell, J

Bench : Division Bench

Judgement

1. The appellant (plaintiff) obtained a money-decree dated the 3rd December 1901 in Suit No, 83 of 1901, against respondents (defendants Nos. 1 to 4) and attached certain land as the property of the judgment-debtors. A claim of the 5th respondent (5th defendant) having been allowed, the appellant brought this suit stating the cause of action to be the order made in favour of the 8th respondent, and praying that the order might be declared void and his attachment of the land confirmed. The plaint also refers to a mortgage for Rs. 1,033, as well as to various other litigations and transactions between the parties, and suggests, rather than actually prays, that he might in the alternative be declared to have a charge upon the land for that sum, and the District Munsif settled an issue No. 7, on this point.

2. In his judgment the District Munsif. entered into an elaborate consideration of the equities of the case, and declared the 5th respondent and the appellant to be entitled to certain liens upon the land, and also that appellant's attachment should hold good, and thus gave relief in respect of both the causes of action assumed to be included in the plaint.

3. Upon appeal the Subordinate Judge treated the suit as one u/s 283 of CPC merely, and holding that the judgment-debtors had no title to the attached property, reversed this decree and dismissed the suit.

4. It is clear from the decision of the Privy Council in Bibi Phul Kumari v.

Ghansyam Misra 7 C.L.J. 3617 M.L.J. 618 : 2 M.L.T. 506 : 14 Bur. L.R. 41 that a suit u/s 283 is one to set aside the order passed upon the claim to the attached property and is a form of appeal therefrom, and the passing of the order forms the plaintiff's cause of action. The plaint in this case expressly states that the cause of action arose on the date of the order made upon the claims, and we think that Munsif was wrong in construing it as containing a claim to enforce a mortgage lien, and that the suit must be considered as having been brought u/s 283 only. It may also be pointed out that the appellant's claim to a lien for Rs. 1,033 depends upon an agreement made by him with respondents Nos. 1 to 4 for the purchase of the lands in question, under which he paid off a prior mortgage, and this agreement has become merged in a decree for specific performance which he obtained in Suit No. 758 of 1879 against these respondents, and a sale-deed which he obtained from the Court, and he asserts that he has thereby become the owner of the land. Being unable to obtain possession he brought Suit No. 80 of 1901 for recovery of the purchase-money paid under the agreement of sale and compensation, and obtained a money-decree against respondents Nos. 1 to 4. He now claims to be the owner of the land, to be prior mortgagee for the amount of the mortgage paid off by him, to have a lien for the amount of purchase money paid, and to recover the last amount under his money-decree.

5. u/s 99 of the Transfer of Property Act, the appellant is not entitled to enforce his mortgage and to bring the land which he has attached to sale otherwise" than by instituting a suit for sale u/s 67 of that Act. The plaint in this case does not ask for a sale, the only remedy-open to the appellant under his alleged mortgage, and the suit must for this reason also be considered as brought u/s 283 of the CPC only.

6. The Subordinate Judge has held as a matter of fact that the respondents Nos. 1 to 4 had no attachable interest in the land in question and we, therefore, dismiss the second appeal with costs.