Patinhare Koonthilot Mayankutti Vs. Kaneelandyil Parkum Thavath Kanhayi Biyyathumma and anr.

LegalCrystal Citation : legalcrystal.com/784330

Court : Chennai

Decided On : Feb-08-1927

Reported in : AIR1927Mad824; (1927)53MLJ512

Appellant : Patinhare Koonthilot Mayankutti

Respondent : Kaneelandyil Parkum Thavath Kanhayi Biyyathumma and anr.

Judgement :

Curgenven, J.

1. These are second appeals from the orders pass- ed by the Additional District Munsif of Badagara in execution of the decree in O.S. No. 254 of 1922 on his file. The respondent who held a paramba upon a mortgage sued her tenant, the appellant, in ejectment in O.S. No. 202 of 1921 and obtained a decree for possession upon payment of Rs. 835 for improvements. She deposited that sum on 11th October, 1923. Meanwhile both the respondent and the appellant were sued by the melcharthdar in the suit first named above, and a decree was obtained on 21st November, 1922 for possession upon payment of a sum of Rs. 1,200 in respect of the same improvements. The difference was due to the adoption of different methods of estimating the value of some of the trees. As the respondent had already settled with the appellant by the deposit of Rs. 835, she applied (a) to have it recorded that she had stepped into the appellant's shoes in respect of the improvements, and (b) for payment to her of the Rs. 1,200. The Additional District Munsif rejected these applications, and it is against their allowance by the District Judge that these further appeals are preferred.

2. The respondent raises the preliminary objection that no such appeals lie. That would be true if the District Munsif passed his orders under Order 22, Rule 10, Civil Procedure Code and the question arises whether that rule applies to proceedings in execution. The learned District Judge has answered this question affirmatively following certain views expressed in Muthiah Chettiar v. Lodd Govinddoss Krishnadoss ILR (1921) M 919 : 41 MLJ 316 . That was a Letters Patent Appeal heard by three learned Judges. Two (Wallis, C.J., and Spencer, J.) expressed the opinion that the rule did apply to orders in execution, whereas the third (Kumaraswami Sastri, J.) was of a contrary opinion. The decision of the case, however, it was found, could be rested upon other grounds. In an earlier case, Sitaramaswami v. Lakshmi Narasimha ILR (1917) M 510, Seshagiri Aiyar and Napier, JJ., held that proceedings after the termination of the suit are not governed by the rule; but as the learned District Judge points out, that decision was with strict reference to the right of a successor in interest to carry on an appeal, and to such circumstances, the words 'during the pendency of a suit' were, it was held, inapplicable. Whether they would have any better application where the suit, strictly so-called, has been closed by a decree, and

the only matter which could be described as pending is an unsatisfied decree, appears to me almost equally open to question. In the most recent case brought to my notice, Srinivasa Aiyangar v. Pratapa Simha Rajah Saheb : AIR1926Mad244 , Devadoss and Waller, JJ., have decided that the rule will not apply to post decree proceedings. I propose to follow this decision for the purposes of this case. Since both the parties to these appeals were parties also to the suit, and the matters arose in execution, it appears to me that the orders may be deemed to have been passed under Section 47, Civil Procedure Code, and therefore that appeals from the learned District Judge's orders are competent.

3. On the merits, I think that the District Judge was clearly right. The learned vakil who represents the appellant cannot but accept the statement of the position contained in paragraph 2 of the judgment, viz.:

When a person who holds a decree which entitles him to recover possession of property on payment of the value of the improvements on it, deposits the value put on the improvements by the decree and takes possession of the property in execution of the decree, he becomes the owner of the improvements, and the person entitled to receive their value from any one who subsequently desires to take possession, The tenant once he has received the value set on his improvements by the decree and has given up possession has no further interest in the improvements.

4. The further argument addressed to me, and which found acceptance with the District Munsif is that it is inequitable that the respondent, who made none of the improvements, should have profited by the circumstance that they were valued more highly in the second suit than in the first. It may perhaps be a somewhat hard case, although it might very well have happened, so far as appears, that the second estimate fell short of, instead of exceeding, the first. The fact remains, however, that the respondent had settled with the appellant by the time the decree in O.S. No. 254 was passed, and had, by so doing, acquired every interest which the appellant had possessed. The improvements had become hers, and she was entitled to receive payment for them, whatever the amount of that payment turned out to be.

5. I dismiss the appeals with one set of costs.