

Usman Vs. Mammooty and ors.

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Court : Kerala

Decided On : Jul-18-1960

Reported in : AIR1961Ker179

Judge : M.S. Menon and; S. Velu Pillai, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Seciton 47

Appeal No. : Second Appeal No. 190 of 1957

Appellant : Usman

Respondent : Mammooty and ors.

Advocate for Def. : M.C. Sridharan, Adv. for Respondents 1 and 2

Advocate for Pet/Ap. : T. Karunakaran Nambiar and; K.N. Karunakaran, Adv.

Disposition : Appeal dismissed

Judgement :

Velu Pillai, J.

1. The appellant having obtained a decree in O. S. 11 of 1952 against respondents 1 and 2 for the recovery of possession of a building with arrears of rent, put the decree in execution, but was met with a contention by the latter, that, by virtue of a pre-decretal agreement between the parties, the appellant has no right to execute

the decree. According to the appellant, the property on which the building is situated, was obtained by him on kanom-kuzhikanom from the tarwad of respondents 1 and 2 and they were lessees of the building under him.

Respondents 1 and 2 had obtained the property under a maintenance allotment from the tar-wad and they sued the appellant in O. S. 287 of 1952 of the same Court for the redemption of the kanom-kuzhikanom, while two junior members of the tarwad also sued in O. S. 347 of 1952 of the same Court for setting aside the maintenance allotment in favour of respondents 1 and 2. The three suits were jointly tried, but during the course of the trial, and as found concurrently by the Courts below, the appellant agreed not to execute the decree which may be passed in O. S. 11 of 1952 and respondents 1 and 2 did not press their contentions in the suit and suffered a decree to be passed against them. The other two suits also were dismissed as not pressed.

2. The learned counsel for the appellant took the point before us, that such pre-decretal agreements cannot be proved, in execution of decrees. It was not disputed on behalf of the appellant, that when the Courts below rendered their judgments which are now before us in this second appeal, they were bound to follow the law as declared by the Madras High Court, that such agreements may be set up and proved in bar of execution, but it was urged, that the point may be decided in this case, as this Court is not bound to give effect to the view held by the Madras High Court, which differs from that held by some of the other High Courts, including the former High Courts of Travancore and Cochin.

We do not think it necessary for the disposal of this second appeal to consider and decide, which of these conflicting views should be preferred, for in our opinion, the appellant has to fail on a short ground. When the agreement was made by the appellant with respondents 1 and 2 within the former Madras State, the law had already been declared in *Papamma v. Venkayya*, AIR 1935 Mad 860, by a full bench of the Madras High Court, which was followed in a number of cases decided by the same High Court ending with *Pcrumalswami Chettiar v. Rajammal*, (S) AIR 1955 Mad 339, which was relied upon by the lower appellate Court, in the order which is under appeal before us.

Obviously, relying on this declaration of the law and trusting to it, the parties entered into the agreement, and on the faith of it, respondents 1 and 2 refrained from pressing their contentions in the suit in which the decree was passed, and even suffered the suit instituted by them to be dismissed as not pressed. In these circumstances we hold, that the appellant is precluded from disputing the validity and binding character of the agreement and contending, that it cannot be relied upon in bar of the execution of the decree.

The appellant's counsel had no valid answer to this, and so the appellant must fail. The vagueness or indefiniteness of another condition in the agreement relating to a proposed assignment of the decree to be passed is separable from and is independent of the other condition in bar of the execution of the decree, and cannot affect its validity. The second appeal is dismissed, with costs.

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