

Samulo and anr. Vs. Gowrachandra Gajapathi Narayana Deo and ors.

Samulo and anr. Vs. Gowrachandra Gajapathi Narayana Deo and ors.

SooperKanoon Citation : sooperkanoon.com/776150

Court : Chennai

Decided On : Oct-23-1899

Reported in : (1900)10MLJ206

Appellant : Samulo and anr.

Respondent : Gowrachandra Gajapathi Narayana Deo and ors.

Judgement :

1. The first question is whether the decree makes all the defendants jointly liable for the whole of the mesne profits. We think having regard to the judgment that this is not so. The 4th issue distinctly raises the question as to the amount recoverable from each and in deciding that issue, the District Judge says the amount of profits will be reserved for decision in execution and nothing more. This tends to show that the question whether each were liable to pay the whole or a part was not before his mind. Moreover the conduct of the parties throughout these proceedings shows that they have considered the question as undetermined by the decree. The next question raised is whether there can now be any appeal as to the liability of the defendants to pay the mesne profits jointly and severally: an order having been made in March 1897, in these proceedings and 'not having been appealed from, it is argued that it cannot be gone into upon appeal on the final order passed in execution as it is a decree which could have been appealed against. We are not prepared to say without further consideration that this decision was a determination of a question arising in execution and relating to the execution of the decree so as to have been appealable in itself apart from the final

order. Even however assuming that it could have been appealed against it appears to us to be the determination of one of the questions which had to be determined before the particular application for execution could be 'finally disposed of. No authority has been cited to show that in such a case the party affected by such partial determination is bound at once to appeal and is not entitled to wait for the final decision and raise the question of the propriety of the order in appeal against that decision. By analogy with cases in ordinary decrees where parties are at liberty to appeal against preliminary order, e.g. for accounts, etc., or to raise the question in the appeal against the final decree we see no reason why a similar course should not be permissible in cases such as this. If the question of balance of convenience is to be considered, it is all in favor of the view we take. Our attention has been called to a recent unreported case S.A. 1459 of 1898, but it is doubtful if that is reconcilable with *Sankaralinga Mudali v. Batnasabhpathi Mudali*. 1. However that may be, the reasoning upon which that case goes does not apply to the present case.

2. On the merits, we think clearly the appellants are not liable for the mesne profits of more land than they have had possession of respectively. No reason is given for holding that they are all jointly and severally liable for the mesne profits of the whole of the lands in question and as throughout it is admitted that they each severally held separate portions of the lands mentioned in their written statements they can only be held liable' for the mesne profits in respect thereof.

3. We must, therefore, modify the order of the lower Court and make the 10th defendant liable for Rs. 8680 and the 18th defendant for Rs. 160 instead of the amount mentioned in the order. The appellants are entitled to be paid their costs by the respondents in this and the lower Appellate Court.