

Kunhamed Vs. Kutti

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Court : Chennai

Decided On : Feb-13-1891

Reported in : (1891)ILR14Mad167

Judge : Arthur J.H. Collins, Kt., C.J. and ;Parker, J.

Appellant : Kunhamed

Respondent : Kutti

Judgement :

1. We agree with the Acting District Judge that the suit is not properly one for a declaratory decree under Section 42 of the Specific Relief Act. The ground of action really is that the defendant by fraud has obtained an advantage in proceedings in a Court having jurisdiction which must necessarily make that Court an instrument of injustice and the remedy would appear to be by way of injunction to restrain the party from executing the decree. The Court cannot itself be made a party to the suit--see Dhuronidhur Sen v. The Agra Bank I.L.R. 5 Cal. 86; and references thereunder. Daniell's Chancery Practice, 3rd edition, p. 1218 (4th edition, p. 1471). Drury on Injunctions, p. 96. Story's Equity Jurisprudence, 899-900.

2. We cannot allow the plaint to be amended, as to do so would change the character of the suit.

3. The second appeal must, therefore, be dismissed with costs.

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