

Sankaran Vs. Parvathi and ors.

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Court : Chennai

Decided On : Oct-15-1895

Reported in : (1896)ILR19Mad145

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

Appellant : Sankaran

Respondent : Parvathi and ors.

Judgement :

1. It was open to the first defendant to plead in Original Suit No. 37 of 1884 that he was already in possession and therefore that a suit for a declaration would not lie. He did not choose to do this, and therefore cannot fall back upon the fact that his possession dates from March 1884 as a ground of defence to the present action (Section 13, Code of Civil Procedure, Explanation 2). Independently of this, however, it is found as a fact that plaintiffs did not actually know that first defendant had obtained possession. We cannot infer that they had constructive knowledge, because their karnavan had notice of the application for execution in December 1883. The plaintiffs are not acting with their karnavan, whose conduct has necessitated their acting independently of him, and therefore they are not affected by his knowledge if such knowledge be proved. We do not think the decision in Kunhiamma v. Kunhunni I.L.R. 16 Mad. 140 expresses dissent from the ground on which Ambu v. Kettilamma I.L.R. 14 Mad. 23 was decided i.e. that Section 43 only applies to cases in which the plaintiff had knowledge of the claim

he was entitled to make; the only dissent expressed was to the view of the late Sir T. Muttusami Ayyar, J., that Section 283, Code of Civil Procedure, gives a special right to sue in opposition to the provisions of Section 42 of the Specific Relief Act.

2. The only other ground taken is as to mesne profits, and it is said that not more than three years' mesne profits could have been awarded. We do not think, however, that first defendant can really be regarded as a trespasser. He stood in the shoes of Echu Menon and was entitled to possession until redeemed. The plaintiff has deducted the arrears of michavaram from the kanom amount due, and thus the calculation has proceeded on the right basis, though the relief has been erroneously described as mesne profits. The second appeal therefore fails and the memorandum of objections is not pressed. The second appeal and memorandum of objections are dismissed with costs.

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