

Allunni Vs. Kunjusha and ors.

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SooperKanoon Citation : sooperkanoon.com/788430

Court : Chennai

Decided On : Dec-26-1883

Reported in : (1883)ILR7Mad264

Judge : Muttusami Ayyar and ;Hutchins, JJ.

Appellant : Allunni

Respondent : Kunjusha and ors.

Judgement :

Muttusawmi Ayyar, J.

1. The appellant Puliankalath Allunni Mannadyar, and the respondents, Puliankalath Kunjusha Mannadyar and others, belong to the same tarwad and he is their karnavan. The properties in suit are in the respondents' possession, and the appellant seeks to eject them on the ground that, by virtue of his position as karnavan, he is entitled to resume possession.

2. In Original Suit 741 of 1876, which gave rise to Appeal Suit 708 of 1877, he claimed possession, alleging that he was their karnavan, that the lands in dispute were made over in 1839 to one Koma Amma under an oral agreement for her maintenance and for that of her descendants, and that the present first respondent, who was in possession as Koma Amma's descendant, had mortgaged some of the lands to the prejudice of the tarwad and thereby lost his right to

continue in possession. The respondents then contended that they held the lands under an assignment of 1874 and on a veppu (mortgage) claim of 1862. As regards lands 18 to 21 in this suit, the Court of First Instance directed the appellant to bring a fresh suit for redeeming them, and, as regards the other lands, his claim was dismissed for the reason that the verbal arrangement of 1839 was not established. But on appeal, it was held that, when a part of the appellant's case and the evidence adduced by him proved to be false, it would require very strong evidence to enable the Appellate Court to say that the remainder of the claim was true, and the suit was therefore dismissed as regards all the lands, on the ground that they were not shown to have been held under the verbal arrangement of 1839. Adverting to the decision of the Court of First Instance, the appellant next instituted Suit 645 of 1879 to redeem eight of the lands, and the High Court decreed the claim as regards four of the eight which are not included in this suit. It is not denied that the relief claimed in the present suit was also claimed in the former suit, but it is argued that the appellant's title to the relief, claimed by virtue of his position as karnavan, was neither offered for adjudication nor adjudicated upon in the former suit, and that the Lower Courts are therefore wrong in holding that the claim is *res judicata*. It appears to me that Explanation II to Section 13 of Act X of 1877 must be taken to refer to the title litigated in the former suit as *contra* distinguished from the relief, claimed, and that where several independent grounds of action are available, a party is not bound to unite them all in one suit, though he is bound to bring before the Court all ground of attack available to him with reference to the title which is made the ground of action. It was held by this Court in *Thyilakandi Ummatha v. Thyilakandi Cheria Kunhamed* I.L.R. 4 Mad. 303 that a party, who, once brought an ejectment suit on the ground that the defendant in possession was his tenant and failed might sue again upon his title as owner. The ground of decision in Appeal Suit 708 of 1877 was that there was no verbal allotment for maintenance as then urged by the appellant. Though his relation as karnavan to the respondents was then incidentally alleged, its legal effect upon the claim was not adjudicated upon.

3. Thus the cause of action in the first suit was the infraction of the alleged agreement. The claim is therefore not *res judicata*. The decree appealed against is set aside and the suit is remanded for disposal on the merits.

Hutchins, J.

4. The only point to be considered is whether the District Judge was right in finding that the plaintiff's claim is *res judicata*. I was at first disposed to think that he was, but I now agree to the judgment proposed by Mr. Justice Muttusami Ayyar.

5. The plaintiff alleged that the lands in dispute belonged to the tarwad of which first defendant Kunjusha is a member and himself the karnavan; that they were granted by a former karnavan to Kunjusha's grandmother for her maintenance, and after her death continued to be enjoyed, first by her daughter Ittikali and upon her death in 1873 by Kunjusha himself; that Kunjusha has created encumbrances prejudicial to the tarwad and that he, plaintiff, is no longer willing to allow him to remain in possession. The relief sought is the avoidance of the encumbrances and the recovery of the property for the tarwad.

6. Original Suit 741 of 1876 was, in almost every respect, a precisely similar suit. Exhibit XX is the plaint and its language is almost identical with that of the present plaint, except that the latter sets out the intermediate proceedings, but the former described more particularly the nature of the agreement under which the lands passed the first defendant's grandmother; it was an oral agreement that the income should be appropriated to the maintenance of herself and her issue and that the lands should not be encumbered or alienated. The relief asked was the same and at first sight the title was the same, viz., that the plaintiff was karnavan and no longer willing to allow the lands to remain with Kunjusha or his alienees. The difference, however, consists in this, he now sues on his absolute right as karnavan, whereas in the [267] former suit he came before the Court as bound by an arrangement made by his predecessor, unless such arrangement could be avoided in consequence of something done by Kunjusha.

7. I is the judgment of the Court of First Instance. The arrangement alleged by the plaintiff was repudiated by Kunjusha. The fourth issue was in effect whether Kunjusha's title commenced under the alleged agreement of 1839 and there were other issues as to his right to encumber or alienate. As regards the lands No. 1 to 8 in that suit, which include Nos. 18 to 21 in this, the plaintiff was referred to a separate suit on the ground that they had been demised on *kanam* to his

knowledge and that he ought to have sued to redeem. As regards the other lands (Nos. 9 to 25 before, but here 1 to 17) the Munsif found that they had, as alleged by plaintiff, been allotted for maintenance; that, the lands being tarwad property admittedly, it lay on Kunjusha, as an anandravan, to establish his right to encumber; that his evidence was untrustworthy and the encumbrance not binding on the tarwad.

8. Plaintiff thus obtained a decree for the lands now numbered 1 to 17, but Kunjusha appealed to the Subordinate Court. The judgment of that Court is VII. The Subordinate Judge discredited the plaintiff's evidence as to the family arrangement of 1839, and, finding the fourth issue against him, dismissed his whole suit with costs.

9. Subsequently, the plaintiff brought Original Suit 645 of 1879 for the redemption of the eight lands (18 to 21 and four others) supposed to have been held by Kunjusha under a kanam. The suit came before this Court in second appeal and he ultimately obtained a decree for the other four lands only, Nos. 18 to 21 having been found not to have been really included in the kanam. In his judgment in the first appeal the District Judge made the following observations: 'The Subordinate Judge reversed the Munsif's (former) decree apparently on the ground that it lay on plaintiff to show on what date the lands were set apart for the maintenance of the branch. It does not appear that any question of division was set up; and I am inclined to think that the decision proceeded on a false principle. The lands sued for were tarwad lands, and it lay on those who claimed them adversely to the tarwad to prove their case.' It is probable that this second suit is due to these remarks, but it does not necessarily follow that it is barred.

10. I now agree that it is not barred. The plaintiff could not have appealed in the former suit, setting up his title as karnavan, because he had come into Court on the footing of an arrangement which entitled Kunjusha to hold the lands upon certain conditions and such arrangement had been finally negatived. The cause of action alleged was the existence of the arrangement and its breach. The cause now alleged is the right of the plaintiff as karnavan to resume. I agree to the proposed decree and the costs of this appeal should be costs of the cause.

