

Narayanasami Reddi Vs. Osuru Reddi

Narayanasami Reddi Vs. Osuru Reddi

SooperKanoon Citation : sooperkanoon.com/790004

Court : Chennai

Decided On : Sep-03-1901

Reported in : (1902)ILR25Mad548

Judge : Arnold White, C.J., ;Davies and ;Moore, JJ.

Appellant : Narayanasami Reddi

Respondent : Osuru Reddi

Judgement :

1. This suit was tried by the District Munsif as a small cause suit and judgment was given for the plaintiff. On an application to this Court to reverse the District Munsif's decree, Subrahmania Ayyar, J., was of opinion that the decree should be set aside and the suit remanded for disposal according to law after further evidence had been taken. Boddam, J., was of opinion that the case was not one in which this Court ought to interfere by way of revision upon the ground that the defence set up by the defendant in this Court had not been raised in the Court of First Instance and that the petition ought to be dismissed.

2. The defendant appealed under Article 15 of the Letters Patent. A preliminary objection was taken by the plaintiff to the hearing of the appeal that there had been no judgment within the meaning of Article 15. We are of opinion that the adjudication by Subrahmania Ayyar and Boddam, J.T., is a judgment within the meaning of the article and we overrule the preliminary objection.

3. The first point taken on behalf of the appellant (the defendant) was that the case was governed by Article 36 of the Letters Patent and not by Sections 575 and 647 of the Code of Civil Procedure, and that the opinion of the senior Judge, that the decree of the Munsif ought to be set aside, should prevail. In our judgment the case is governed by Section 575 of the Code of Civil Procedure. In the case relied on by the appellant *Husaini Begam v. The Collector of Muzaffarnagar* I.L.R. 11 All. 176 the Allahabad Court held that the Letters Patent and not the Code applied upon the ground that there had been no hearing of the appeal within the meaning of Section 575 inasmuch as the point upon which the Judges had differed in opinion was a point taken by way of preliminary objection that the appeal was time barred. In the case before us there was a hearing of the petition by a bench of two Judges who differed in opinion as to the way in which the petition should be disposed of. The fact that Boddam, J., was of opinion that this Court ought not to interfere by way of revision for the reason that the case put forward by the petitioner had not been set up in the Court of First Instance is no ground for saying that there has been no hearing of the petition.

4. As regards the merits, the defendant sought to exercise certain special powers conferred upon landholders by Section 38 of the Rent Recovery Act. To prevent these powers being put into force and his interest in the land sold, the plaintiff paid the defendant's claim. On the hearing of the revision petition it was not contended that the defendant was a landholder within the meaning of Sections 3 and 38 of the Rent Recovery Act, or that he was by law entitled to exercise the special powers conferred by Section 38. In these circumstances it seems to us clear that the defendant having no legal right to sell the plaintiff's interest in the land, and the plaintiff having paid the money in order to escape the injury which he would have sustained if his interest in the land had been sold, the plaintiff is entitled to recover the money paid by him as money had and received by the defendant to the use of the plaintiff. It is not necessary to consider whether the course adopted by the defendant amounts to coercion within the meaning of Section 15 of the Indian Contract Act. Section 72 of the Indian Contract Act has no application to this case. The section merely says that a person to whom money has been paid under coercion must re-pay it. The section in no way affects the principle of law that, where the defendant has received money which in justice and equity belongs to

the plaintiff under circumstances which render a receipt of it a receipt by the defendant to the use of the plaintiff, the plaintiff is entitled to recover. This was the view taken by the Calcutta High Court in *Jugdeo Narain Singh v. Raja Singh* I.L.R. 15 Calc. 656. and with this view we agree. Subrahmania Ayyar, J., was of opinion that this money in justice and equity belonged to the defendant if it should appear on evidence being taken that the defendant was the party to whom the rent payable in respect of the land in the plaintiff's holding ought to have been paid. We do not agree with this view. The money was not paid as rent, but as a means of preventing the unlawful sale of the plaintiff's interest in the land.

5. The fact that the plaintiff may have been under an obligation to the defendant and that defendant may have been legally entitled to enforce that obligation seems to us to be immaterial. The method by which he sought to enforce the supposed obligation was illegal. He purported to exercise certain special rights created by a special act, whereas he did not in law possess these rights.

6. We think the judgment of the District Munsif was right and the appeal ought to be dismissed with costs.