

V. Samanna Iyer Vs. Kadathur Village Rajavaikal Channel Silt Clearance Committee

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Court : Chennai

Decided On : Nov-04-1925

Reported in : AIR1926Mad577

Appellant : V. Samanna Iyer

Respondent : Kadathur Village Rajavaikal Channel Silt Clearance Committee

Judgement :

1. The petitioner was a secretary of the Kadathur Village Committee for the purpose of silt clearance in 1915. The plaintiff has brought the suit on behalf of a committee elected in 1922 for collecting subscriptions for carrying on silt clearance. The contention of the petitioner is that the plaintiff is not entitled to bring the suit against him. The District Munsif tried the suit and dismissed it on the merits. The subordinate Judge held that the suit was not properly framed, that the villagers were entitled as a body to sue for any sum that might remain in the hands of the petitioner and directed an amendment of the plaint and remanded the suit to the Munsif's Court for disposal on the merits. We think the order for amendment was made without jurisdiction. The plaintiff's case was that the committee of 1922 was entitled to demand from the petitioner the amount which remained in his hands in 1915. There is no averment in the plaint that the suit was on behalf of the whole village. From the attitude of the plaintiff throughout the case it is apparent that he fought the case on the footing that the committee of 1922 was entitled to

maintain the suit against the defendant. We do not think that this is a case in which an amendment of this kind should have been allowed; for by allowing an amendment different sets of plaintiff's will be introduced into the case and their cause of action would be different from the cause of action set up by the present plaintiff. The committee of 1915, or if such a committee is not existing now the villagers would be entitled to sue. When a person brings a suit alleging that he had the right to sue and when it is found that he has not the right the Court would not be justified in directing an amendment of the plaint in order to enable the proper party to sue. We, therefore, think the Subordinate Judge acted without jurisdiction in ordering the amendment. We, therefore, set aside his order directing an amendment of the plaint. In one sentence he has stated that the findings of the lower Courts on other points which are mixed questions of fact and law are reversed. This is a very unsatisfactory way of disposing of the contentions raised in the issues. The issues raised are plain questions of fact. We, therefore, set aside the decree of the Subordinate Judge and direct him to restore the appeal to file and dispose of it according to law. Costs of the appeal will abide the result. The petitioner will have the costs of this petition in this Court. The civil miscellaneous appeal is dismissed with costs.

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