

Subba Naicken Vs. Rami Naicken and ors.

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Court : Chennai

Decided On : Aug-12-1912

Reported in : 16Ind.Cas.734

Judge : Sundara Aiyar and; Sadasiva Aiyar, JJ.

Appellant : Subba Naicken

Respondent : Rami Naicken and ors.

Judgement :

1. With regard to the northern half of the land, the subject-matter of the suit, the finding is that the defendant has been in possession of it. It has been found that plaintiff was not in possession of it within the statutory period. Plaintiff's title also has not been found to be established. The second appeal must, therefore, be dismissed with regard to that portion of the land.

2. With regard to the southern portion, the defendants did not persist in their claim of title, though they originally set it up. The plaintiff stated that, after the institution of the suit, the defendants took possession of the southern half also. In answer to the petition for temporary injunction, the defendants stated that they were in possession of the whole land. The plaintiff got a decree in the first Court establishing his title to the whole land. Before the Appellate Court, the plaintiff asked to be permitted to amend his plaint by adding a prayer for possession; This, the District Judge refused to allow. He says: 'If the defendants are really in

possession of the southern half of the suit land and persist in keeping him out of possession, it is open to the plaintiff to bring another suit in ejectment.' We do not see why this litigation should be prolonged by plaintiff being left to another suit. There can be no doubt that the Court has power to allow an amendment of the plaint with reference to events that transpire after the institution of the suit. If, pending a suit for declaration, the defendant takes possession, it has been repeatedly held that the plaintiff may be allowed to amend his plaint by asking for possession. As the defendants admitted their possession of the southern half in the District Mansif's Court, we think the plaintiff should have a decree for the southern half. The amendment will be made at once. There will be no order as to costs in this Court. Plaintiff will pay half the defendant's costs in the lower Courts.

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