

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Wilkinson.

KUNHIAMMA (PLAINTIFF), APPELLANT,

v.

KUNHUNNI AND OTHERS (DEFENDANTS NOS. 1 TO 3),
RESPONDENTS.*

1892.
April 7.

Specific Relief Act—Act I of 1877, s. 42—Civil Procedure Code—Act XIV of 1882, s. 283—Suit for declaration of title by an objector in execution proceedings—Consequential relief.

In a suit under Civil Procedure Code, s. 283, for a declaration that the sale to defendant No. 2 of certain land in execution of a decree was invalid, it appeared that the land had been attached in execution of a decree obtained by defendant No. 2 against defendant No. 1, who held it as the plaintiff's tenant, that the plaintiff had intervened unsuccessfully in the execution proceedings and had been referred to a regular suit, and that the land had been brought to sale and purchased by defendant No. 2 who was now in possession :

Held, that the suit was not maintainable for want of a prayer for possession:

SECOND APPEAL against the decree of A. Thompson, District Judge of North Malabar, reversing the decree of A. Venkataramana Pai, District Munsif of Tellicherry, in original suit No. 113 of 1889.

Suit under Civil Procedure Code, s. 283, for the declaration that the sale in execution of certain property was invalid.

The facts of the case are stated above sufficiently for the purposes of this report.

The decree of the District Judge dismissed the suit.

The plaintiff preferred this appeal.

Sankara Menon for appellant.

Sankaran Nayar for respondent No. 2.

JUDGMENT.—This is a suit instituted under section 283, Civil Procedure Code, for a decree declaring that the auction sale of certain property sold in execution of a decree obtained by second defendant against first defendant is invalid, the property being the property of the plaintiff, and at the time of sale in the possession of plaintiff's tenant. On the 30th November 1888 such posses-

* Second Appeal No. 1691 of 1891.

sion was divested by the delivery order of the Court and as found by the District Judge the second defendant is now in possession. The question is whether, under these circumstances, a suit for a declaratory decree will lie. By section 15, Act VIII of 1859, the Civil Courts were authorized to make binding declarations of right without granting consequential relief. This section was repealed by Act I of 1877, and it was thereby enacted that any person entitled to any property might institute a suit against any person denying his title, and that the Court might in its discretion make a declaration that he was so entitled, provided that no Court should make any such declaration, where the plaintiff being able to seek further relief than a mere declaration of title omits to do so. In the present case, it is clear that the further relief, which plaintiff is entitled to supposing her suit is well founded, is possession of the property. But it is contended that section 283 of the Code of Civil Procedure authorizes a party against whom an order under sections 280-282 has been passed to file a suit for a decree declaratory of his right only, and reliance is placed on the remarks of Mr. Justice Muttusami Ayyar in *Ambu v. Kettilamma*(1). The question for decision in that case was whether the suit, which was one for possession, was barred by the provisions of section 43. The plaintiff in the suit had obtained a decree setting aside the Court sale, and the learned Judges held that under section 43 of the Code of Civil Procedure that suit did not bar the entertainment of the subsequent suit for possession. It was found there, as a fact, that plaintiff when instituting the first suit was not aware of the transfer of possession under the Court sale, and this no doubt influenced the Judges in their decision. With great respect for our learned colleague, we are unable to agree with him in holding that section 283 gives a special right to sue for a declaration of title in direct opposition to the provisions of section 42, Specific Relief Act. Section 283 gives the party against whom an order under sections 280-282 has been passed the right to institute a suit to establish the right which he claims to the property in dispute, and he must sue for the whole right which he can claim at the time he institutes the suit. In the present case the right which plaintiff claims is a right to possession, and as undoubtedly one of the principal objects of the proviso to section 42 was to

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prevent multiplicity of actions and to prevent a man getting a declaration of right in one suit and then harassing his opponent with another suit for possession, we are unable to hold that plaintiff could sue in this suit for a bare declaration and immediately after institute a suit for possession. In our judgment section 42 of the Specific Relief Act is the only provision of the law, and the appellant's pleader can point out no other, under which a suit for a declaratory decree can be brought, and we cannot import into section 383 any other right than that which is conveyed by the words of the section.

We agree with the Lower Appellate Court that the suit is not maintainable and we dismiss the second appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

RAMA AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

VARADA (PLAINTIFF), RESPONDENT.*

*Limitation Act—Act XI of 1877, sched. II, art. 179—Civil Procedure Code, s. 235—
Formal defect in application for execution.*

On an application for execution of a decree, it appeared that the only previous application for execution which had been made within a period of three years had been defective, by reason of its not containing the particulars required by Civil Procedure Code, s. 235 (f), and had been returned for amendment, but had not been amended :

Held, that the present application was not barred by limitation.

APPEAL against the order of C. Ramachandra Ayyar, Acting District Judge of Nellore, dated 11th December 1890, reversing the order of M. Visvanatha Ayyar, District Munsif of Kavali, on miscellaneous petition No. 695 of 1890.

The holder of the decree in original suit No. 219 of 1875, on the file of the District Munsif of Kavali, applied for execution by the above-mentioned petition. It appeared that the execution of the decree was not barred on 22nd July 1889, when an application for execution was made, but that application was returned

* Appeal against Appellate Order No. 19 of 1891.