DAIVACHILAYA PILLAI v. PONNATHAL.

JUDGMENT.—We are of opinion that the Judge's decision is correct. The point now raised as to whether a single fee of Rs. 10 is sufficient was not argued and considered in *Narayana* v. *Muttayan*(1).

We agree with the Lower Courts that each separate alienation is a different subject within the meaning of section 17 of the Court Fees Act. Though all such alienations may be included in one suit, according to the course of decisions in this Presidency, it does not follow that each alienation is not a separate subject requiring a separate Court fee. Each alienation creates a distinct right vesting in the alienee, and, therefore, when the reversioner seeks for a declaration that a number of distinct alienations are invalid, he must be held to be suing for that number of declarations. The test indicated in *Moti Singh* v. *Kaunsilla*(2) appears to us to contain the correct principle on which should be determined the question as to the number of declarations which are sought to be obtained in any particular suit.

We dismiss this appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Best and Mr. Justice Subramania Ayyar.

1895. March 18, 20.

NARAYANASAMI GRAMANI (DEFENDANT), APPELLANT,

v.

PERIATHAMBI GRAMANI (PLAINTIFF), RESPONDENT.*

Will—Devise of one kani out of an estate—Selection by the devisee.

The owner of land, measuring one kani and three-quarters, died, leaving a will by which he devised one kani thereof to the plaintiff, who now sued to recover one kani selected by him out of the land in question:

Held, that plaintiff had the right to make his selection and was entitled to a decree.

SECOND APPEAL against the decree of W. F. Grahame, District Judge of South Arcot, in appeal suit No. 297 of 1893, affirming the decree of K. Rangamannar Ayyangar, District Munsif of Villupuram, in original suit No. 76 of 1893.

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(1) I.L.R., 7 Mad., 134. (2) I.L.R., 16 All., 308.

* Second Appeal No. 1520 of 1894.

Suit for possession of land described in the plaint and claimed under the devise quoted in the judgment of the High Court.

The District Munsif passed a decree for the plaintiff which was affirmed on appeal by the District Judge.

The defendant preferred this second appeal.

Krishnaswami Ayyar for appellant.

Madhava Rau for respondent.

JUDGMENT.—The plaintiff (respondent) is a devisee. The clause of the will under which he claims runs thus :—"one kani punja "land in Ambili Mottu Palla punja should be given to Peria- "thambi (plaintiff), my elder sister's son." The said plot Ambili Mottu Palla punja measures one and a three-quarters kanis. The plaintiff sued for the possession of a particular portion measuring one kani out of the plot in question. The District Munsif decreed the claim. On appeal the District Judge, after rejecting the contention raised by the defendant, that the devise was void for uncertainty, confirmed the decree. He, however, observed in his judgment that the plaintiff cannot be allowed to choose which particular part of the field he shall have, that the field must be divided into two portions, one containing one kani and the other containing the remainder of the field with reference to quality of soil and the plaintiff shall have the portion containing one kani.

It is argued before us that the Lower Courts should have dismissed the suit, as the plaintiff had no right to select and ask for a specific portion of the land as he does in the plaint.

We think that the District Judge was in error in saying that the plaintiff was not entitled to ask for the particular portion of the land mentioned in the plaint. In a case like the present the devisee has clearly the right to choose. It has been long settled that "if a man devises two acres out of four acres that lie together, "this is a good devise and the devisee shall select" (Jarman on Wills, 5th Edition, page 331). In *Hobson* v. *Blackburn*(1) Leach, M.R., held that where a general grant was made of ten acres adjoining or surrounding a house, part of a larger quantity, the choice of such ten acres adjoining or surrounding was in the grantee and that a devise to the like effect was to be considered as a grant. In *Jacques* v. *Chambers*(2) Knight Bruce, V.C., laid down that where a testator leaves a number of articles of the same

(1) 1 My. & K., 571. (2) 2 Coll., 435, 441.

NARAYANA-SAMI GRAMANI v. PERIATHAMBI GRAMANI.

kind to a legatee and dies possessed of a greater number, the legatee and not the executor has the right of selection. The same view was taken in *Tapley* v. *Eagleton*(1) where the testator who possessed three leasehold houses in King Street, bequeathed two houses in that street without mentioning which two houses the legatee should take. Jessel, M.R., held that the legatee was entitled to elect which two he will take.

There is thus clear authority for holding that the decree of the courts below is correct. The appeal fails and is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Best and Mr. Justice Subramania Ayyar.

1895. February 15.

KRISHNA PILLAI AND OTHERS (DEFENDANTS NOS. 1, 3 AND 6), APPELLANTS,

v.

RANGASAMI PILLAI AND OTHERS (PLAINTIFF AND DEFENDANTS NOS. 2, 4, 5 AND 7 TO 13), RESPONDENTS.*

Mortgage—Redemption—Mortgage sued on not proved—Admission by defendants of mortgage right.

The plaintiff sued to redeem a kanom of 1859. The kanom was not proved, but it appeared that the defendants in possession had in various documents admitted that they were kanomdars under the plaintiff's predecessor in title. The Subordinate Judge held that the kanom to which the admissions related could not have been executed before 1823 which was less than sixty years from the date of some of the admissions and he passed a decree for redemption:

Held, that the plaintiff having failed to establish the kanom on which the suit was based should not have been allowed to fall back upon some other as to which the defendants had made the admissions in question.

SECOND APPEAL against the decree of A. Venkataramana Pai, Subordinate Judge of South Malabar, in appeal suit No. 657 of 1893, reversing the decree of V. Kelu Eradi, District Munsif of Palghat, in original suit No. 452 of 1892.

Suit to redeem a kanom for Rs. 25 dated 1859. The District Munsif found that the land was held on kanom and that the plaintiff was the assignee of the jenm title: but he was of opinion

(1) L.R., 12 Ch. D., 683.

* Second Appeal No. 1480 of 1894.