

SURYA-
NARAYANA-
MURTI
" "
TAMMANNA.

first defendant, and were for a year only and had expired before the suit was filed. But even if the leases were subsisting leases granted after the father's death it would make no difference in the decision of the present question. The proviso to section 42, Specific Relief Act, prohibits the Court from granting a declaration like that asked for in this suit "where the plaintiff being able to seek further relief than a mere declaration of title omits to do so." Here it was open to the plaintiff to have sued for partition of his share in the joint family property, if it was joint family property as alleged by plaintiff. That was a further relief of a very substantial character, and even if the land were in possession of tenants entitled to continue in occupation it would be no bar to a partition of the property among the members of the family, the tenant's right of occupation, if any, not being affected by such partition. We do not think that the suit is one in which we should allow the plaint to be amended at this stage and the suit converted into a partition suit, as the objection was taken from the very beginning and plaintiff notwithstanding persisted in continuing the suit as framed.

On the preliminary ground stated above we must set aside the decree of the Subordinate Judge and dismiss the plaintiff's suit against all the defendants with costs throughout.

No order is required on the memorandum of objection.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

1901.
November 26.

KRISHNA AYYAR (PETITIONER—DEFENDANT NO. 1), APPELLANT,

v.

MUTHUSAMI AYYAR (COUNTER-PETITIONER—PLAINTIFF),
RESPONDENT.*

Transfer of Property Act—Act IV of 1882, s. 89—Order absolute for sale—Notice to defendant of application—Practice.

Notice need not be given to a defendant before an order absolute for sale is made under section 89 of the Transfer of Property Act.

* Civil Miscellaneous Second Appeal No. 34 of 1901, against the order of G. F. S. Power, District Judge of Tanjore, in Civil Miscellaneous Appeal No. 675 of 1900 affirming the order of A. Rajagopala Ayyar, District Munsif of Mayavaram, in Miscellaneous Petition No. 785 of 1900 (Original Suit No. 216 of 1899),

PETITION under section 305 of the Code of Civil Procedure, by a judgment-debtor, for postponement of a sale to enable him to raise the amount due. The decree, which had been passed on a hypothecation bond, allowed six months for payment, which period had expired. Petitioner relied upon the fact that he had received no notice of the proceedings taken by plaintiff for the passing of an order absolute. The District Munsif held that no notice was necessary and rejected the petition. The District Judge, on appeal, said:—"I do not think the District Munsif is wrong. Section 89 of the Transfer of Property Act does not say that notice must be given before an order absolute for sale is made and I cannot, therefore, hold that the omission to give notice makes such order illegal." He dismissed the appeal.

KRISHNA
 AYYAR
 v.
 MUTHUSAMI
 AYYAR.

Defendant No. 1 preferred this second appeal.

Kasturiranga Ayyangar for appellant.

Sivasami Ayyar for respondent.

JUDGMENT.—The application having been made within one year after the passing of the decree, no notice of the application for an order absolute for sale is necessary. Section 89 of the Transfer of Property Act does not require any notice to be given. We may add that the appellant does not show that he was in any way prejudiced by the want of such notice.

We dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar and Mr. Justice Moore.

SESHAMMA SHETTATI AND OTHERS (PLAINTIFFS), APPELLANTS.

1902.
 February
 4, 14.

v.

CHICKAYA HEGADE AND OTHERS (DEFENDANTS NOS. 1
 AND 3 TO 8), RESPONDENTS.*

Limitation Act—Act XV of 1877, sched. II, art. 139—Claim for more than twelve years by tenants from year to year of permanent occupancy rights, to knowledge of landlord—Determination of lease.

A person who has lawfully come into possession of land as tenant from year to year or for a term of years, or as mortgagee, cannot, by setting up, during the

* Second Appeal No. 434 of 1900, against the decree of J. W. F. Dummergac, District Judge of South Canara, in Appeal Suit No. 197 of 1899, affirming the decree of M. Deva Rao, Acting District Munsif of Kundapur, in Original Suit No. 200 of 1898.