

granting such a decree in *Ram Shankar Lal v. Ganesh Prasad* (1). We therefore reverse the decree of the District Judge and remand the appeal for disposal on the merits. Costs will abide the result.

RADHA-
KRISHNA IYER
v.
MUTHUSAWMY
SHOLAGAN.

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Pinhey.

SOMASUNDARUM CHETTY (PLAINTIFF), APPELLANT,

v.

VADIVELU PILLAI (DEFENDANT AND HIS LEGAL
REPRESENTATIVE), RESPONDENT.*

1908
September
24.
October 7.

Pleadings - Declaratory decree—Suit on title - No relief on the ground of adverse possession.

A declaration cannot be given on a title neither stated in the plaint nor raised on the issues. A plaintiff who comes into Court alleging title without more, cannot be allowed to succeed on the basis of title by adverse possession.

SUIT for a declaration of title to property under a sale-deed executed in favour of plaintiff in 1890. The plaintiff, having failed to establish the sale to him, tried to obtain a declaration of his right to the suit property on the strength of his possession for more than twelve years. Both the lower Courts refused to grant him a declaration on his adverse title.

The plaintiff appealed to the High Court.

K. Ramachendra Ayyar for appellant.

The respondent was not represented.

JUDGMENT.—We think that the District Judge, having found that the sale set up by the plaintiff was not true, was justified in refusing to give the plaintiff a declaration of his right to enjoy the suit property on the strength of possession for more than twelve years. It is argued that the District Judge has misconstrued the plaint. We do not think he has. In the plaint the plaintiff alleges that he bought the property in 1890, and that he

(1) I. L. R., 29 All., 385.

* Second Appeal No. 161 of 1906, presented against the decree of H. Woberly, Esq., District Judge of Tanjore, in Appeal Suit No. 114 of 1905,* presented against the decree of M. R. Ry. G. Kolhandaramannjulu Naidu District Munsif of Kumbakonam, in Original Suit No. 233 of 1904.

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is enjoying it undisputedly, having constructed buildings, etc., thereon. He does not however give the date on which he took possession, or say anything about possession for more than twelve years as giving him a title apart from the alleged sale. The only issue framed as to title is "Whether the suit property belongs to plaintiff?" Reading this issue with the plaint it cannot be said that it raises the question of title based on twelve years' possession. In *Shiro Kumari Debi v. Govind Shau Tanti*(1) it was distinctly held that a declaration cannot be given on a title not stated either on the plaint or the issues. We agree with that decision and dismiss this appeal.

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Abdur Rahim.

1908
September 8.

TIRUVENKATACHAR (PLAINTIFF), APPELLANT,

v.

DESIKACHAR (DEFENDANT), RESPONDENT.*

Easement Act, Act V of 1882, s. 4—Right to take water through another's land when sold by Government.

A right to take water through another person's land whenever Government should sell such water is a right of easement within section 4 of the Easement Act.

It will make no difference that water was not taken for several years because Government refused to sell or because there was no water in the source of irrigation.

SUIT for declaration of plaintiff's right to an artificial channel in defendant's land; for the restoration of a water-course and for an injunction and damages.

The plaintiff claimed a right of easement to carry water through the channel to his own lands whenever Government should sell water to him. The plaintiff's lands in respect of

(1) I. L. R., 2 Calc., 418.

* Second Appeal No. 951 of 1905, presented against the decree of G. F. T. Power, Esq., District Judge of Coimbatore, in Appeal Suit No 184 of 1903, presented against the decree of M. R. Ky. T. Sadasiva Aiyar, District Munsif of Coimbatore, in Original Suit No. 269 of 1902.