

WHITE, C.J.,
 AND
 KRISHNA-
 SWAMI
 AIYAR, J.
 ———
 GAYARA
 RAMANNA
 v.
 ADABALA
 RATTAYYA.

As in our opinion section 21 does not bar the suit, we must set aside the decrees of the Courts below and send the case back to the Court of First Instance to be disposed of according to law. We desire to point out that this decision does not entitle the plaintiff to reopen the question as to the assignment of revenue forming part of the emoluments of the office. The decree of the Collector must be regarded as binding to that extent.

Costs will abide the event.

APPELLATE CIVIL.

Before Sir Ralph S. Benson, Officiating Chief Justice, and Mr. Justice Krishnaswami Aiyar.

1909.
 November
 1, 2.

SHUPPU AMMAL AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

SUBRAMANIYAN AND OTHERS (DEFENDANTS, NOS. 1, 2, 5 AND 8),
 RESPONDENTS.*

Right of suit—Suit by person not a party to an instrument sustainable when charge created in such person's favour—Decree for relief not specifically asked for; when allowable.

A plaintiff asking for certain specific reliefs and for such other relief as the Court should deem fit, should, on being found disentitled to the specific reliefs asked for, be given such relief as the circumstances justify.

A person who is no party to a document but in whose favour a charge is created by such document is entitled to maintain a suit to enforce its terms, either as the actual beneficiary or as the charge-holder.

SECOND APPEAL against the decree of J. H. Munro, District Judge of South Malabar at Calicut, in Appeal Suit No. 394 of 1906, presented against the decree of P. P. Raman Menon, District Munsif of Palghat, in Original Suit No. 122 of 1905.

The facts are fully stated in the judgment of the Court of First Instance as follows :—

The first plaintiff had two sons, the second plaintiff and the deceased Krishna Pattar, the father of defendants Nos. 1 and 2. In 1896, the second plaintiff and the said Krishna Pattar divided

* Second Appeal No. 70 of 1907.

and it was provided by the deed of partition that second plaintiff and Krishna Pattar should each contribute Rs. 150 and invest the Rs. 300 on some landed property and make the interest directly payable to first plaintiff towards her maintenance. Till the money is invested on land, second plaintiff and Krishna Pattar were each to pay Rs. 1½ a month to first plaintiff. On first plaintiff's death the deed of partition provides that the second plaintiff is to collect the money, perform the obsequies and divide the balance between himself and Krishna Pattar. The first plaintiff is no party to this partition deed, and, so long as first plaintiff lives, the second plaintiff has no right whatever to sue for the amount which Krishna Pattar undertook to contribute towards first plaintiff's maintenance. It therefore follows that, while second plaintiff has no right to join the first plaintiff in bringing the suit, the first plaintiff cannot enforce the agreement contained in the deed of partition to which she was no party. What is more, there is no provision in the deed of partition for the payment of the Rs. 150 to first plaintiff. All that is provided for by the partition deed (Exhibit A) is that second plaintiff and Krishna Pattar should each contribute Rs. 150 and invest the Rs. 300 on landed property for the benefit of the first plaintiff. Under no circumstances was Krishna Pattar to pay the Rs. 150 to first plaintiff. Such being the agreement in Exhibit A the suit to recover the Rs. 150 is clearly unsustainable. As to the interest the second plaintiff has no right whatever to recover it and the first plaintiff cannot sue for it, there having been no privity of contract between her and Krishna Pattar. No doubt the first plaintiff has a right to sue for her maintenance, but certainly she has no right to sue for the enforcement of the agreement contained in the deed of partition to which she was no party. Second plaintiff might, no doubt, have invested the whole Rs. 300 on land for first plaintiff's benefit and then sued his brother's sons for contribution, but he did not choose to do so, and, as the suit is now framed, the second plaintiff has no right whatever to be on record. In these circumstances I find the first and third issues against plaintiff and dismiss the suit with costs.

This judgment was confirmed on appeal.

Plaintiffs appealed to the High Court.

T. R. Ramachandya Ayyar for appellants.

Dr. S. Swaminadhan for third respondent.

S. Ranganathan Ayyar for fourth respondent.

BENSON, C.J.,
AND
KRISHNA-
SWAMI
AITAB, J.
—
SHUPPU
AMMAL
v.
SUBRA-
MANIVAN.

BENSON, C.J.,
 AND
 KRISHNA-
 SWAMI
 AIYAR, J.
 ———
 SHUPPU
 AMMAL
 v.
 SUBRA-
 MANIYAN.

JUDGMENT.—We think the Courts below are wrong in dismissing the suit altogether. It is true the first plaintiff is not entitled to be paid the sum of Rs. 150 she asks for. But, under the claim for further relief, she is entitled to such relief as the nature of the case admits of. The lower Courts are not right in saying that the first plaintiff is not entitled to sue on Exhibit A. It is true she is no formal party to it. But the executants of the document have given a charge in her favour for Rs. 300 till the money is contributed by both the sons and then it ought to be invested on the security of immoveable property in her favour. It is clear that she has a charge for Rs. 300 and that she is entitled to have that amount invested in her favour. The decisions in *Rakhmabai v. Govind*(1) and *Husaini Begam v. Khwaja Muhammad Khan*(2) justify an action by her on the ground that she is the beneficiary. But even apart from the relation of trustee and *cestui que trust* she is as charge-holder entitled to maintain the action. She would be entitled to a decree on production of a duly executed mortgage deed by a third party compelling the defendants Nos. 1 to 3 and the second plaintiff (he consents to it by his Vakil) to pay Rs. 150 each for investment on such a mortgage. As the Courts below have dismissed the suit without trying the other issues, we reverse the decrees of the Courts below and remand the case to the District Munsif for disposal according to law. The costs of this and the lower Appellate Court will be provided for in the revised decree.

(1) 6 B.L.R., 421.

(2) (1907) I.L.R., 29 All., 151.