

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

1914
October.
20 and 28.

K. P. RAMAKRISHNA PATTAR (FIRST DEFENDANT), APPELLANT,

v.

K. P. NARAYANA PATTAR AND ANOTHER (PLAINTIFF AND
SECOND DEFENDANT), RESPONDENTS.*

Specific Relief Act (I of 1877), sec. 42—Declaration, suit for—Legal character or right to property, meaning of—Rights under a contract, declaration as to, if maintainable—Section 42, not exhaustive—Ordinary rule—Exception—Kuri, subscriber to—Assignee from subscriber—Right of, to continue payment—Suit for declaration, by, if maintainable.

Section 42 of the Specific Relief Act does not contemplate a suit for a declaration that a valid personal contract subsists between the plaintiff and the defendant, as it is not a suit for a declaration of title to a legal character or a right to property.

Section 42 of the Specific Relief Act is not intended to be exhaustive as regards the circumstances under which declaratory suits can be maintained.

Robert Fischer v. The Secretary of State for India in Council (1899) I.L.R., 22 Mad., 270 (P.C.), referred to.

Kristaya v. Kasipati (1880) I.L.R., 9 Mad., 55, referred to.

But a declaratory relief will not be given in respect of rights arising out of a contract which would affect only the pecuniary relationship between the parties to the contract, unless there are exceptional circumstances in a case to take it out of the ordinary rule.

Where the plaintiff, who was the purchaser of the rights of the second defendant who was a subscriber to a half-ticket in a kuri started by the first defendant as its proprietor, sued the latter for a declaration that he was not a defaulter and was entitled to continue to pay the subscriptions to the kuri;

Held, that the suit for declaration was not maintainable.

SECOND APPEAL against the decree of V. K. DESIKACHARIYAR, the Subordinate Judge of Palghat, in Appeal No. 721 of 1912, preferred against the decree of A. NARAYANAN NAMBIYAR, the District Munsif of Palghat, in Original Suit No. 360 of 1911.

The material facts appear from the judgment.

C. V. Anantakrishna Ayyar for the appellant.

A. Narayana Sarmu for the first respondent.

K. R. Subrahmanya Sastriyar for the second respondent.

* Second Appeal No. 699 of 1913.

JUDGMENT.—The first defendant is the appellant. He is the karaiswan (or proprietor) of a *kuri* which he started in August 1906. There were 11 tickets in the *kuri* and the first defendant induced other persons to enter into contracts with himself on certain terms which included the payment of subscriptions by them to the *kuri* at the rate of Rs. 250 yearly for each ticket-holder. The first defendant allowed also each ticket-holder to assign his rights under each contract to third persons subject to certain conditions.

RAMA-
KRISHNA
v.
NARAYANA,
—
SADASIYA
ATTAR AND
NAPIER, J.J.

The plaintiff became the assignee of half of a ticket from the second defendant who had entered into one of the several contracts with the first defendant. The sixth subscription to the chit had to be paid on the 17th August 1911. The plaintiff had to send Rs. 125 to the first defendant as subscription towards the chit due on that date. He sent the Rs. 125 but the first defendant refused to receive it. Hence the plaintiff brought the suit on the 31st August 1911 for two reliefs, namely, (a) that the first defendant be compelled "to receive the amount due by the plaintiff for the sixth drawing after declaring that the plaintiff has right to pay subscriptions for the said *kuri*," (b) "that the first defendant do give to the plaintiff the due receipt of the *kuri* for the sixth drawing."

The District Munsif disbelieved the first defendant's story that Rs. 125 was not tendered before noon on the 17th August 1911, and believed the plaintiff's evidence that the money was tendered in proper time, but following *Kristaya v. Kasipati* (1) he refused to give a decree compelling the first defendant to accept the Rs. 125. He, however, gave the plaintiff a decree declaring that the plaintiff is entitled to continue payment of subscriptions to the *kuri* conducted by the first defendant as the plaintiff was not a defaulter. His decree was confirmed by the learned Subordinate Judge.

The contentions argued on behalf of the first defendant in the Second Appeal are found in the grounds 2 and 4 of the memorandum of Second Appeal. Those two grounds are as below :—

"(2) The plaint does not disclose any cause of action.

(1) (1880) I.L.R., 9 Mad., 55.

RAMA-
KRISHNA
v.
NARAYANA.

SADASIYA
AYYAR AND
NAPIER, JJ.

“(4) The suit for a mere declaration is not maintainable according to the section 42 of the Specific Relief Act, the plaintiff having the right to claim consequential relief.”

Though in the fourth ground, it is contended that section 42 of the Specific Relief Act bars the suit because the plaintiff had the right to claim consequential relief, the argument at the hearing was somewhat different. The contention was that only a person entitled to any “legal character” or to “any right to property” can institute a suit for a declaratory relief in respect of his title to such legal character or right to property and that the plaintiff’s suit to declare that he has contractual rights as against the first defendant does not come within the class of suits to declare a right to a legal character or a right to property. We think that the contention must be upheld, to this extent, namely, that section 42 of the Specific Relief Act does not contemplate a suit like the present. We take it that a man’s “legal character” is the same thing as a man’s status. “A man’s status or ‘legal character’ is constituted by the attributes which the law attaches to him in his individual and personal capacity, the distinctive mark or dress, as it were, with which the law clothes him apart from the attributes which may be said to belong to normal humanity in general.” According to Holland, the chief varieties of status among natural persons may be referred to the following causes:—(1) sex, (2) minority, (3) ‘*patria potestas*’ and ‘*manus*’, (4) coverture, (5) celibacy, (6) mental defect, (7) bodily defect, (8) rank, caste and official position, (9) slavery, (10) profession, (11) civil death, (12) illegitimacy, (13) heresy, (14) foreign nationality, and (15) hostile nationality (See Banerjee’s Lectures on Specific Relief). We think that a declaration that a valid personal contract still subsists between the plaintiff and the first defendant is not a right to declare a title to a legal character or a title to right to property.

Section 42 of the Specific Relief Act is no doubt not intended to be exhaustive as regards the circumstances under which declaratory suits can be maintained. In *Robert Fischer v. The Secretary of State for India in Council*(1) the judgment of their Lordships of the Privy Council contains the following sentences in page 282, “Now in the first place it is at least open to doubt

(1) (1899) 1 L.R., 22 Mad., 270 (P.O.).

whether the present suit is within the purview of section 42 of the Specific Relief Act. . . . It is, in substance, a suit to have the true construction of a statute declared and to have an act done in contravention of the statute, rightly understood, pronounced void and of no effect." "That is not the sort of declaratory decree which the framers of the Act had in their mind." This seems to show that declaratory decrees can be passed though they may not come under section 42 of the Specific Relief Act. In *Kristaya v. Kasipati*(1) the learned Judges say (at page 57) "it is suggested that a suit may be brought to obtain a declaration that the right has not been forfeited by default and that it continues to subsist." (The right in question in that case was the right to pay a debt by instalments.) "But the suit before us is not one of that kind and it is not necessary for us to express an opinion on the question whether, under certain circumstances, a declaratory suit may not be brought." This only shows that the learned Judges were not prepared to say without hesitation that such a suit would not lie in exceptional cases. But we have not been referred to any case in which any of the High Courts in India has given a declaratory relief in respect of rights arising out of a contract which would affect only the pecuniary relationship between the parties to the contract and we do not think that there are exceptional circumstances in this case to take it out of the ordinary rule.

In the result, we reverse the decrees of the lower Courts and dismiss the suit in its entirety. Under the circumstances the parties will bear their respective costs throughout.

K.R.

RAMA-
KRISHNA
S.
NARAYANA.
SADASIVA
AYYAR AND
NAPIER, J.J.

(1) (1880) I.L.R., 9 Mad., 55.