

In the High Court of Travancore-Cochin.
Before

The Hon'ble Shri P.K. Subramania Iyer, Judge.
The Hon'ble Shri Joseph Vithayathil, Judge.

Appeal Suit No. 2 of 1953.

C.S.No. 167 of 1118 of the Appellate District Court.

Droupathi, daughter of Meenakshi, residing at Thazhum-
palli Paranna, Rameswaram Padinjara Muri, Mattancherry
Village, Cochin Kanayannur Taluk...Appellant-defendant in the lower
court.

By advocate Mr. Rama Shenoi.

Padmavathi, daughter of Raja Parlicker, residing in Bairavi Paranna,
T.D. East Gate Road, Rameswaram Padinjara Muri, Mattancherry
Village, Cochin Kanayannur Taluk...Respondent-Plff. in lower court.

By advocate Mr. V. Sankara Menon.

This appeal having been finally heard on 26.7.1954 the
court on the same day delivered the following

Judgment.

(Delivered by Subramania Iyer J.).

The only point pressed before us by Sri Rama Shenoi,
learned counsel for the appellant, is, as regards the mesne profits
decreed against his client by the court below. He argues that the
decree of the court below has declared that the possession of the
appellant is that of a possessory mortgagee entitled to get Rs. 1800
by way of mortgage money as also the value of improvements fixed by
the court below. This part of the decree has not been challenged by
the plaintiff respondent. Therefore, it stands. The result is that
the possession of the appellant is rightful and has been rightful
for all the relevant period. To hold that the appellant's possession
is wrongful which is necessary to render him liable for mesne profits
would be inconsistent with the decree which definitely declares his
possession to be that of a possessory mortgagee, and therefore -
absolutely rightful. The part of the decree of the court below
rendering the appellant liable for mesne profits from 30.11.1116,
the date of Ex.V, the deed of sale in favour of the appellant, cannot
be sustained. It is this deed of sale which has got metamorphosed
into a possessory mortgage on account of the decree of the court
below. That part of the decree of the court below which renders the
appellant liable for mesne profits past and future is vacated. The

appeal is allowed to the above limited extent and the decree of the court below modified. The remaining portion of the decree of the court below will stand.

2. The court below has not fixed a time within which the amount due to the appellant should be deposited in court. Learned counsel for the appellant pressed that a time for such deposit be fixed by this court and his client the appellant be permitted to execute the decree for realisation of the amount by sale of the properties. We, therefore, direct that the respondent/plaintiff do deposit the amount payable to the appellant in court on or before 30th of January 1955 and that in default the appellant be entitled to execute the decree for recovery of the amount of Rs.1200 as also value of improvements due to him by sale of the properties comprised in Ex.V with the improvements made by the appellant. In the circumstances of the case we direct both parties to pay themselves their respective costs in this appeal.

26. 7. 1954.

66.P.T.Sudramania Iyer, Judge.

56.Joseph Vithayathil, Judge.

(True copy)

Compared by D. S. S.

U. S. S.
Asst. Registrar for Registrar.
Manager

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