

(1916) 08 MAD CK 0029
In the Madras High Court

A. Bhagirathi Nethiar Amma and Another	APPELLANT
Vs	
M.M. Minakshi Nethiar Amma and Another	RESPONDENT

Date of Decision : 09-08-1916

Acts Referred:

Citation : 35 Ind. Cas. 891 : (1916) 4 LW 225 : (1916) 31 MLJ 438

Judgement

1. In this case, the District Munsif passed a decree in an Original Suit. Against that decree, an appeal was preferred and the appellate Court confirmed the decision of the District Munsif. After the confirmation of the decree, an application was made to the District Munsif to amend the decree. It is settled law in this Presidency that where a decree is confirmed by the Appellate Court, the decree liable to be amended is only that of the Appellate Court and not that of the court of first instance, The District Munsif had therefore no jurisdiction to entertain the application for amendment of the decree of the Appellate Court. Mr. Kutti Krishna Menon drew my attention to a decision in *Visvanatha Chetty v. Ramanathan Chetti* ILR (1901) M. 646, which says that after amendment, the decree can be appealed against and contended that the proper course which should have been adopted by the present petitioners was to have preferred an appeal against the amended decree and that they should not be allowed to agitate the matter in a Revision Petition. What was held in *Visvanathan Chetti v. Ramanathan Chetti* ILR (1901) M. 646, was that the District Munsif was wrong in thinking that the decree was not in conformity with the judgment, that consequently he was in error and that an appeal lay to the District Judge against the order directing the amendment. In the present case, as the District Munsif had no jurisdiction to entertain the

application, his amendment cannot add to or vary the decree. Therefore there is no decree to appeal from. In the decisions in Barhamdeo Singh v.

Harmanaji Singh (1914) 18 C.W.N. 772, Krishna Upadya v. Ganapaye Upadya (1914) 28 I.C. 586, Raja Ram Rao v. Arumugam Karupputti

(1915) 17 M.L.T. 224 it was held that where there is an appeal pending whether it be to the Privy Council or to the High Court, the jurisdiction of

the Lower Court to amend the decree during the pendency of that appeal is not taken away : but once the decision is passed by the Appellate

Court, the only court competent to amend the decree is the Appellate Court which passed it and not the Court against whose decree the appeal

was preferred. I hold that the District Munsif had no jurisdiction to amend the decree. I must set aside his order and allow the petition. I make no

order as to costs.