

(1912) 11 MAD CK 0015
In the Madras High Court

Ajapa Natesa Pandara Sannadhi

APPELLANT

Vs

S.M.R.M. Ramalingam Pillai and Another

RESPONDENT

Date of Decision : 25-11-1912

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : 20 Ind. Cas. 767 : (1913) 24 MLJ 658

Judgement

1. A general question of jurisdiction has been raised viz., that the Subordinate Judge's Court had no jurisdiction, since the proper tribunal was the

District Court (Section 14 of Act XX of 1863) and a preliminary application to that Court for leave was necessary (Section 18). The present suit is

a suit falling within Clauses (a) and (g) of Section 92 of the CPC viz., a suit in which a decree is sought removing a trustee and settling a scheme.

2. It seems to us that the suit is governed by the code and not by the Religious Endowments Act of 1863. In our opinion the maxim generalia

specialibus non derogant has no application to a case like this when the general enactment contains special provisions relating to the matter dealt

with in the earlier special enactment. The object of the new sub-section to Section 92 of the Code was to make it clear that the provisions of the

section were mandatory and not permissive, and the object of the saving clause in the sub-section was to make it clear that the Act of 1863 was

still in force..

We think this general objection as to jurisdiction fails.

3. A special question of jurisdiction has also been raised, viz., that when the present suit was instituted the Subordinate Judge's Court had no

jurisdiction. We are of opinion that the suits must be taken to "have been

instituted, when the plaint was presented for the second time to the Subordinate Judge's Court. The fact that it was not at that time stamped does not take away the jurisdiction of that Court.

4. As regards the objection that the appointment of a Receiver was bad by reason of order XL Rule 1(2) this paragraph was intended to protect

3rd persons not parties to the suit and has no application to the present case.

5. On the merits we are not disposed to interfere.

6. The appeal is dismissed with costs.