

(1921) 04 MAD CK 0003
In the Madras High Court

Anakkaran Puthiavalappi Mussan Haji	APPELLANT
Vs	
Thiyan Thavara Koran and Others	RESPONDENT

Date of Decision : 28-04-1921

Acts Referred:

Citation : (1921) 14 LW 387 : (1921) 41 MLJ 392

Hon'ble Judges : Ramesam, J;Oldfield, J

Bench : Full Bench

Judgement

Oldfield, J.—The Lower Appellate Court has so far decided the case against the plaintiff-appellant, because it answered in the affirmative

the question whether a person holding under a lease granted before a suit is bound by the decision against the lessor in that suit, although he is not a

party to it. We cannot follow the Lower Appellate Court in this; and in fact the, only support adduced for its opinion is the question from an

American author in *Seshappaya v. Venkatramana Upadya* ILR (1899) Mad. 459. But the portion of that quotation at present material was not so

for the purpose of the issue in that case and the learned Judges in fact, after observing that it was inconsistent with the principle of English, Irish and

Indian Cases declined to decide as to its correctness. On the other hand, although no case of tenancy has been shown to us, the principle applied

to other cases of transfers in *Sita Rant v. Amir Begum* I.L.R.(1886) . All 324 *Jey Chandra Banerjee v. Sreenath Chatterjee* ILR (1904) Cal 357

Abdul All v. Miakhau Abdul Hussain I.L.R.(1911) . 35 Bom. 297 and *Ramachandra Dhondo v. Malkappa* I.L.R.(1916) 40 Bom. 679 is in

accordance with plaintiff's contention. Adopting that principle, we must set aside the Lower appellate Court's decree and remand the appeal to it

for further hearing on its merits. Costs to date here and in the Lower Appellate Court will be provided for in the decree to be passed. Stamp value will be refunded on application.

Ramesam, J

2. I will only add that an illustration of the principle of privity by subordination Bigelow gives (6th edition at page 160) is the common law case of feoffor and feoffee. This he says is Coke's illustration. Then he mentions the case of land-lord and tenant for which no authority is cited. On the other hand Black on Judgments Vol. II Section 549 states the law in the other way citing Satterlee v. Bless 36 Cal. so that even in America it is doubtful whether the law as to landlord and tenant is as stated by Mr. Bigelow. All other authority is against it. I agree in the order of my learned brother.