

(1947) 03 MAD CK 0002
In the Madras High Court

Angathevan by Guardian Mother, Nagathal and Others	APPELLANT
Vs	
A.R.L.V. Natarajan Chettiar and Others	RESPONDENT

Date of Decision : 13-03-1947

Acts Referred:

Citation : (1947) 60 LW 529 : (1947) 2 MLJ 189

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—In a former execution proceedings in execution of another decree, the same question arose as arises in the present suit, i.e.,

whether the property in dispute was the property of the first defendant or whether it was property in which the third defendant had a share which

could be attached and sold in execution of the decree against him ?"" It was there held that the third defendant did have a share in the property, it

being the property of the joint family consisting of the first defendant and his two sons, the second and third defendants. This same question arises

now in execution of another decree. The Courts below held that the earlier decision operated as res judicata in the present proceedings ; because

(i) the question arose between the first defendant and the third defendant, (ii) it was necessary to decide that question for the purpose of disposing

of the claim by the plaintiff, and (iii) the question was finally decided. The lower appellate Court also found that on the evidence and on certain

judgments filed before it in connection with the question of res judicata, that it had been proved in the present case that the property was the joint

family property of defendants 1 to 3.

2. The decision in (1931) ILR 53 103 (Privy Council) has been cited here on

behalf of the contesting respondent as an authority with regard to the question of res judicata, it being contended that there, too, a somewhat similar question arose in claim proceedings, which was afterwards the subject of a title suit between co-defendants. It is however unnecessary to decide whether the ordinary rule of res judicata between co-defendants would here apply ; because it was held in *Kandadai Narasimhachariar Vs. Raghava Padayachi*, that a decision in a claim suit as well as in the claim petition has no application beyond the execution of the decree which had given rise to those proceedings. It is true that it was not necessary for the Full Bench in *Kandadai Narasimhachariar Vs. Raghava Padayachi*, to consider whether the decision in a claim suit operated as res judicata in proceedings in execution of another decree ; but the learned Judges clearly felt it necessary to decide that question in order to set at rest the conflicts and uncertainties arising out of previous decisions. The point was carefully considered and the learned Judges were of opinion that a claim suit, arising as it does out of claim proceedings, has relationship only to the particular decree that was being executed.

3. The other question is one of fact; but the learned Subordinate Judge has taken into account passages found in the judgments of the trial Court

and the appellate Court in the previous proceedings and in concluding his discussion of this question of fact, he said,

On a proper appreciation of the entire oral and documentary evidence adduced and considered along with the judgment in O.S. No. 80 of 1937,

the only irresistible conclusion that follows is that this property could not have been the self-acquisition of the first defendant or treated as such.

In various passages in the discussion of this point, the learned Subordinate Judge referred to an important admission of the first defendant and said

that he found no reason for discrediting the evidence of the plaintiff's witnesses. On the other hand, there can be little doubt that the judgments in

the previous proceedings were given considerable weight and might, therefore, have affected his judgment and decision. Clearly, dicta found in

other judgments are not admissible in evidence ; and it is conceded here that the learned Subordinate Judge should not have referred to any

passage from those judgments.

4. The appeal is therefore allowed and remanded to the lower appellate Court for

fresh disposal after disregarding the previous judgments.

5. Costs of this second appeal will abide the result. Court-fee paid on the memorandum of second appeal will be refunded.