

(1913) 11 MAD CK 0032
In the Madras High Court

Annasami Sastrial and Others

APPELLANT

Vs

A.S. Ramasami Sastrial and Others

RESPONDENT

Date of Decision : 21-11-1913

Acts Referred:

Citation : AIR 1914 Mad 16 : (1915) ILR (Mad) 553

Hon'ble Judges : Miller, J

Bench : Single Bench

Judgement

Millar, J.—The plaintiffs' father and the defendants' father were bound to maintain their mother. By a partition deed between them the defendants' father undertook to pay a certain-quantity of paddy to the plaintiffs' father: the consideration being, as I understand it (the petitioners have not chosen to have the deed translated and printed) that the plaintiffs' father was to maintain the lady. The Subordinate Judge finds that she was maintained by the plaintiffs' father and after him by the plaintiffs till her death; and though that finding is contested there is evidence to support it, and I must accept it.

2. The question of law is whether the suit is cognizable by a Small Cause Court. It is contended that it is not cognizable as-being a suit relating to maintenance.

3. It is no doubt a suit for what the defendants would have had to provide for the maintenance of their grand-mother if the plaintiffs had not done it; but the basis of the suit is the agreement between the plaintiffs' father and the defendants' father, neither of whom is the maintenance-holder, and the suit is to recover what cannot be described as maintenance in the hands of the plaintiffs. It is really payment for having provided maintenance for the lady. I have had some doubt on this question, but I think that Ramaswamy Pantulu and Another Vs. Narayanamoorthy Pantulu and Another, though not exactly on all fours is analogous authority on the point. There the liability had been fixed by a decree: and here by an agreement, but the reasoning of the learned Judges is applicable here, and on the strength of that decision I hold that this is not a suit relating to maintenance.

4. It is contended that it is a suit for specific performance of a contract, and a suit relating to a trust. Neither of these contentions was raised in the lower Court. The latter is based on the partition deed which has not been translated and printed, and the former is, I think, untenable. The suit is, no doubt, for payment of money payable under a contract to pay it, but I do not think that is what is meant in the schedule to the Small Cause Courts Act by a suit for specific performance. I dismiss the petition with costs.