

(1894) 01 MAD CK 0016
In the Madras High Court

Appachi Seetharam Patter

APPELLANT

Vs

Valia Veetil Parnkutti and Others

RESPONDENT

Date of Decision : 01-01-1894

Acts Referred:

Citation : (1894) 4 MLJ 280

Hon'ble Judges : Muthuswami Aiyar, J

Bench : Division Bench

Judgement

Muthuswami Aiyar, J.—The judgment awarded no separate costs but the decree awarded separate costs. To this extent there was variance between the judgment and the decree, The Munsiff had jurisdiction to interfere u/s 206 of the Civil Procedure Code. No separate costs can be allowed under Rule 37 of the Rules framed by the High Court under the Legal Practitioner's Act unless separate defences were set up and the defendants succeeded upon those defences; neither the 7th and 8th nor the 11th and 12th defendants succeeded on their separate defences. That the Panayam deed sued on was without consideration and the debt was not binding are common grounds upon which alone the plaintiff's suit failed. The District Munsiff is in error in awarding separate Vakil's fees to 7th and 8th defendants and to 11th and 12th defendants. He ought to have awarded them only one. When a court owing to the misconstruction of a rule of practice exercises a power or jurisdiction which it would not have but for the misconstruction, it is a proper case for interference u/s 622. The District Munsiff's order will be modified accordingly. Defendants 7, 8, 11 and 12 will pay petitioner's costs in this Court.