

(1917) 08 MAD CK 0028
In the Madras High Court

Ariyaputhra Goundan

APPELLANT

Vs

Ettiya Goundan and Others

RESPONDENT

Date of Decision : 07-08-1917

Acts Referred:

Evidence Act, 1872 — Section 35

Citation : AIR 1918 Mad 1331 : 42 Ind. Cas. 223 : (1917) 6 LW 635 : (1917) 33 MLJ 615

Hon'ble Judges : Phillips, J;Bakewell, J

Bench : Full Bench

Judgement

Phillips, J.—The question for determination is whether a razinama filed in O.S. No. 8 of 1912 in the District Munsif's court, Tindivanam

required registration in respect of the portions in the razinama which were not given effect to in the decree in that suit. It must be noted here that

one of the parties to O.S. No. 8 of 1912 was a minor and consequently the court had to consider the whole razinama and come to a decision as to

whether it was beneficial to the minor, and it did so consider it as is recited in the decree. In this view the case appears to be governed by the

principles enunciated by the Privy Council in Pranal Anni v. Lakshmi Anni ILR (1809) M. 608 where their Lordships say: ""The razinama in so far

as it was submitted to and was acted upon judicially by the learned Judge was in itself a step of judicial procedure not requiring registration."" The

razinama before us was submitted to and acted judicially upon by the District Munsif, and these remarks would appear to apply. The court by its

decree accepted the whole razinama as being beneficial to the minor, and in consequence of such acceptance passed a decree in accordance

therewith so far as the suit property was concerned. The whole razinama was

thus embodied in the decree of the Court and consequently requires no registration.

2. This was the view taken by this Court in *Natesa Chetti v. Vengu Nachiar* ILR (1910) M 102 but was dissented from by another Bench in

Chellamanna v. Rama Bow I.L.R (1911) M 46 (following *Birbhadra Nath v. Kalpataru Panda* (1905) 1 C.L.J. 388., *Kali Charan Ghosal v. Ram*

Chundra Mandal ILR (1903) C 788 and *Gurdeo Singh v. Chandrika Singh* and *Chandrika Singh v. Bash Behary Singh* ILR (1907) C. 193 in

which the remarks of the Privy Council in *Pranal Anni v. Lakshmi Anni* ILR (1809) M. 608 were explained, as meaning merely that the entry of an

agreement in a decree or order of court would be relevant to prove the agreement. This proposition is provided for by Section 35 of the Evidence

Act and therefore if those remarks are restricted to such a meaning they would appear to be redundant. If the court has newly considered the

razinama in so far as it affects the property then in suit, the whole razinama cannot be said to have been submitted to and acted judicially upon by a

court and this was the view taken in *Muthayya v. Venhataratnam* ILR (1903) M. 553 and *Patha Muthammal v. Esup Rowther* ILR (1906) M 365

where it was held that the razinama in respect of property not comprised in the decree would not be exempt from the provisions of Section 17 of

the Registration Act. Where as in this case, the decree was passed after Judicial consideration of the whole razinama, the agreement becomes part

and parcel of the decree, for it cannot be presumed that the decree would have been passed if the portion of the razinama relating only to the suit

property had been considered. The reasons for passing the decree were (1) that the parties agreed to it, (2) that the razinama as a whole was

beneficial to the minor and therefore in the words of their Lordships of the Privy Council in *Pranal Anni v. Lakshmi Anni* ILR (1899) M. 508 the

order was pronounced in terms of the razinama and gave immediate effect to it so far as was possible in the decree itself.

3. I would therefore hold that the razinama does not require registration and is admissible in evidence. The appeal is accordingly allowed with costs

here and in the Lower Appellate Court.

Bakewell, J.

4. I agree. The decree constitutes an estoppel by matter of record between the

parties, and this appears to be the principle upon which decrees and orders of court are excepted from" the operation of Section 17 of the Registration Act, and to be implied in the expressions "step of judicial procedure" and "judicial evidence" used by their Lordships of the Privy Council in the case cited by my learned brother. If therefore the terms of the compromise are recognised by the decree as binding upon the parties, the latter are bound by virtue of the decree and it is immaterial that the decree itself does not profess to carry out all those terms, except for purposes of execution.