
(1914) 07 MAD CK 0024
In the Madras High Court

Ayyagiri Veerasalingam

APPELLANT

Vs

Koovur Basivi Reddi and Another

RESPONDENT

Date of Decision : 21-07-1914

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Citation : AIR 1915 Mad 322 : (1914) 27 MLJ 173

Judgement

1. There is a preliminary objection taken to the entertainment of the second appeal on two grounds:-One ground is that it is practically a second

appeal preferred against the order of the District Court which was passed in appeal from the order of the Subordinate Judge recording a

compromise under Order XXIII, Rule 3, and that such a second appeal is prohibited by Order XLIII Rule (m) and Section 104, Clause (2) -The

short answer to this is that there was no appeal to the District Court against the order of the Subordinate Judge recording the compromise nor is

the present second appeal against any order of the District Court passed in appeal against any such order of the Subordinate Judge. The appeal

and second appeal are respectively from the decree of the Subordinate Judge passed in accordance with the compromise agreement after

recording it and from the decree of the District Judge on appeal against the Subordinate Judge's decree.

2. The next contention is that Section 96, Clause (3) prohibits an appeal from a decree passed by the Court with the consent of the parties. The

answer to this objection is that the decree itself was not passed by the consent of parties but the Court held that there was a consent of the parties

to the terms of the compromise agreement which was recorded and it passed a decree in accordance therewith notwithstanding the objection of

one of the parties.

3. The preliminary objection fails.

4. Coming to the merits of the second appeal, the appellant's learned Counsel contended that under the compromise agreement the first defendant

agreed only to execute a sale deed to the plaintiff outside the Court in consideration of the plaintiffs withdrawing the suit, and that he did not agree

to a decree being passed compelling him (the 2nd defendant) to execute such a sale deed. Whether he agreed to the Courts passing a decree or

not, compelling him to execute a sale deed is not relevant. The real question is whether the suit was adjusted by a compromise, one of the terms of

which was that the 1st defendant should execute such a sale deed and whether a decree can be passed in accordance with such a term. We think

that it could be done.

5. Another contention put forward by the appellant's Counsel Mr. Zynuddin who argued the case with ability and fairness was that such a term

does not "relate to the suit" and hence the decree cannot embody it. Though certain earlier decisions were inclined to the view that any terms which

did not directly concern the subject matter of the suit could not be embodied in the decree, we prefer to follow the later cases, in *Natesan Chetti v.*

Veng Nachiar ILR (1909) M. 102 and *Gobind Chandra Pal v. Dwarka Nath Pal* ILR (1908) O. 837. which hold that all terms which form the

consideration for the adjustment of the matters in dispute in the suit. Whether they form part of the subject matter of the suit or not do become

related to the suit and can be embodied in the decree.

6. In the result the second appeal fails and is dismissed with costs of the first Respondent.