
(1934) 08 MAD CK 0059
In the Madras High Court

C. Murugesu Mudaliar

APPELLANT

Vs

C. Balasundarammal

RESPONDENT

Date of Decision : 28-08-1934

Acts Referred:

Citation : AIR 1935 Mad 24 : 153 Ind. Cas. 769 : (1934) 40 LW 715

Hon'ble Judges : Walsh, J

Bench : Division Bench

Judgement

Walsh, J.—There were two brothers Venkatesa Mudaliar and Sami Mudaliar. Venkatesa Mudaliar died leaving a widow Balasundarammal who is the plaintiff in O.S. No. 359 of 1933 filed in April of that year in the city civil Court. Sami Mudaliar also died leaving a son Murugesu who is the defendant in that suit. The widow's suit was for possession of a certain item of property owned by her husband as a divided brother. She relies on a partition deed between the brothers. The defence is that the partition deed was nominal and was not acted on and the brothers continued to live jointly. Murugesu Mudaliar the defendant in O.S. No. 359 of 1933 in the city civil Court had filed a suit in the High Court O.S. No. 99 of 1933 previous to the filing of O.S. No. 359 of 1933 in the city civil Court in which he claims that notwithstanding the deed of partition he is entitled to all the family properties and asks for an injunction against the widow. The petitioner asked the city civil Court to stay the suit in that Court pending the decision of the suit in the High Court. The application was refused and this Civil Revision Petition has been filed against that order.

2. The argument of the petitioner is that the issue, as regards the nominal character of the partition raised in the O.S. No. 99 of 1933 in the High Court if settled in his favour will dispose of the suit in the city civil Court and that Section 10, Civil P.C. applies. To this it is replied that the subject-matter of the suit is not the same, and that these are the issues in O.S. No. 359 of 1933 before the city civil Court which do not arise in the suit before the High Court. It cannot be denied that the subject-matter is different (O.S. No. 359 of 1933, being only for

one item of property) and that issues arise in O.S. No. 359 of 1933 which do not arise in O.S. 99 of 1933 (vide latter part of issue 1 and issues 2 3 and 4).

3. The petitioner relies on a decision of this Court by Phillips, J., Ramachandra Pellai v. Neelmbal Achi 1923 Mad. 88 and on a decision by a single Judge in a recent Calcutta case S.M. Jinnat Bibi v. Howrah Jute Mills Co. Ltd. 1932 Cal 751. He also quotes the recent Privy Council case Krishnayya Suryarao v. Rajah Pittapur (1933) P.C. 202 as to the meaning of the words "question in issue was substantially the same" in Section 33, Evidence Act. I do not think that this latter case is of any material help in determining the meaning of Section 10, Civil P.C. It is quite possible that evidence in one of these suits might be relevant in the other but that is not the matter before me. On behalf of counter petitioner is quoted Sreeramulu v. Sreeramulu 1922 Mad. 304, a decision by Venkatasubba Rao, J., of this Court followed in Kunnamangalath v. Koman Nair 1925 Mad. 574 by Srinivasa Iyengar, J., of the Court and by Curgenvin, J., in Vellachamy v. Muthiah Chetty 1927 Mad. 1132. As observed by Curgenvin, J., in the latter case the statement of facts in Ramachandra Pillai v. Neelmbal Achi 1923 Mad. 88 is not sufficiently explicit to render it clear whether the case would have answered to the test laid down by Venkatasubba Rao, J., in Sreeramulu v. Sreeramulu 1922 Mad 304 that the words "matter in issue" should be deemed to denote the entire; subject in controversy. As regards the Calcutta decision S.M. Jinnat Bibi v. Howrah Jute Mills Co. Ltd. 1932 Cal 751 quoted before me the facts are again not sufficiently clear, though there are remarks, of the learned Judge in that case which go to support petitioner's contention.

4. It has to be noted however that Venkatasubba Rao, j., in Sreeramulu v. Sreeramulu 1922 Mad 304, followed an earlier Calcutta case Bipin Behari v. Jogendra Chandra 1917 Cal 248 whereas the recent Calcutta, case S.M. Jinnat Bibi v. Howrah Jute Mills Co. Ltd. 1932 Cal 751, makes no reference to this previous Calcutta case nor to any other case decided by any other High Court. It is clear therefore that the balance of authority in Madras is in; favour of the view that "the matter; in issue" in Section 10, Civil P.C. denotes "the entire subject in controversy. Curnenvin, J., has also dealt in that case with the argument raised before me founded on the omission in the present Code of the words "for the same relief" which were found in the Code of 1882. He says the omission

although it must have been done with the object of widening the rule's application still only renders it certainly applicable to two suits of: which the matter in issue is identical though the reliefs asked for may differ.

5. He also points out that Section 10 requires, that "the matter in issue" in the latter suit should be directly and substantially in issue in the earlier, and that the use of this definite article suggests that the rule will not apply where only "a matter in issue is common." I respectfully agree with his remarks and following the majority of the decisions in this Court" dismiss the petition with costs.