
(1931) 01 MAD CK 0023
In the Madras High Court

(Chavali) Ramakrishnayya

APPELLANT

Vs

(Yeleswarapu) Soorayanarayana Sarma

RESPONDENT

Date of Decision : 23-01-1931

Acts Referred:

Citation : AIR 1933 Mad 224

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—The only question in this second appeal is whether the plaintiff should have been awarded his costs of the suit by the lower Courts. The plaintiff is a minor appearing by his guardian. In favour of the plaintiff represented by this guardian a promissory note was executed by the defendant. The guardian asked for the money. The defendant refused to give it unless he executed a security bond. As he refused to pay money this suit was instituted. The plaintiff has been given a decree for the amount, but has not been given his costs. u/s 35, Civil P.C., costs are in the discretion of the trial Court, and unless a principle is involved on which the decision of the point is based, this Court very seldom interferes with the order made by the lower Courts. In this case both the lower Courts have come to the same conclusion. One of the reasons given by the appellate Court, that the guardian cannot give an effective discharge and therefore the defendant is entitled to ask for security, may not be a proper ground for refusing costs. But the lower Courts on the evidence find that the guardian is not a man of property and the defendant acted upon proper legal advice in insisting that security should be given. Having regard to these circumstances, which are also relied upon by the lower Courts, I cannot say that the discretion of the lower Courts has been wrongly exercised in this case. In these circumstances the second appeal is dismissed. In this Court each party will bear his own costs.