

(1897) 12 MAD CK 0031
In the Madras High Court

Collector of Vizagapatam

APPELLANT

Vs

Abdul Kharim Sahib

RESPONDENT

Date of Decision : 06-12-1897

Acts Referred:

Citation : (1898) ILR (Mad) 113 : (1898) 8 MLJ 4

Judgement

1. The Bombay case relied on by the District Judge has been dissented from by this Court in referred case, No. 12 of 1893. Sir T. Muthusami Aiyar there observed: "The words in the Sections are "succeeds" and "fails" in the suit and they refer to the ultimate decision or the result of the suit and not to the mode in which the decision is arrived at. I should be doing violence to the language of the Section if I introduced into them the words "after contest" which, I do not find in them." We see no reason to dissent from this view.

2. We accordingly allow the petition and direct that the plaintiff in the suit do pay the Collector the stamp duty payable on the plaint and the costs of this application. We have dealt with this matter u/s 622 C.P.C. as we are of opinion that the District Judge has failed to exercise a jurisdiction vested in him by law in consequence of a misconstruction placed by him on Section 412, C. P. C.