

(1893) 08 MAD CK 0018
In the Madras High Court

Gangaraju and Others

APPELLANT

Vs

Kondireddiswami and Others

RESPONDENT

Date of Decision : 30-08-1893

Acts Referred:

Citation : (1894) ILR (Mad) 106

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

1. Assuming that the suit was maintainable, there can be no doubt that the decision is correct on the facts found.
2. It is contended, however, that the suit is not sustainable by reason of the decree in Summary Suit No. 72 of 1890 on the file of the Head Assistant Collector and of the order for ejectment u/s 10 of Act VIII of 1865 (Madras).
3. The first plaintiff did not appear to defend that suit and a subsequent application of his to have the ex parte decree set aside was dismissed. Hence the present suit on title.
4. As was held in Rama v. Tirtasami ILR 7 Mad. 61 the decision of a question of title by a Revenue Court is merely incidental, and no bar to a fresh suit on title in a Civil Court. Our attention has been called to the decision in Ragava v. Rajaqopal ILR 9 Mad. 39 The learned Judges who decided that case held that the decision and order of a Revenue Court u/s 10 of Act VIII of 1865 would bar a subsequent suit on title in the Civil Courts. But it does not appear that the decision in Rama v. Tirtasami ILR 7 Mad. 61 was brought to their notice. We are of opinion that the principle laid down in Rama v. Tirtasami ILR 7 Mad. 61 is correct.
5. We, therefore, dismiss this appeal with costs.