
(1922) 02 MAD CK 0002
In the Madras High Court

Gannabathula Venkamma

APPELLANT

Vs

Gannabathula Ranga Rao and Others

RESPONDENT

Date of Decision : 10-02-1922

Acts Referred:

Citation : AIR 1922 Mad 227 : 70 Ind. Cas. 741 : (1922) 15 LW 593 : (1922) 43 MLJ 33

Hon'ble Judges : Kumaraswami Sastri, J

Bench : Single Bench

Judgement

Kumaraswami Sastri, J.—I do not think that the decree of the Privy Council reversing the decree of the High Court as to the adoption is a

ground for review of judgment passed prior to the decision of the Privy Council, on the strength of the judgment of the High Court. In Kotaghiri

Venkata Subbamma Rao v. Vellanki Venkatarama Rao 24 M. 1 : 27 I.A. 197 : 4 C.W.N. 725 : 10 M.L.J. 221 : 2 Bom. L.R. 771 : 7 Sar. P.C.J.

678 : (P.C.) their Lordships of the Privy Council observe that the ground of amendment must be something which existed at the date of the decree

and that the section does not authorise the review of a decree which was right when it was made on the ground of the happening of some

subsequent event. In Annamalai Chettiar Subramania Iyer 4 M.L.T. 86 Wallis and Munro, JJ., held, following the decision of the Privy Council,

that the ground for amending a decree or review must be something which existed at the date of the decree and were of opinion that the decision of

the Bombay High Court in Waghela Raisangji v. Shaik Masludin 13 B. 330 : 13 Ind. Jur. 391 : 7 Ind. Dec. 219 must be treated as overruled by

the decision of the Privy Council in Kotaghiri Venkata Subbamma Rao v. Vellanki Venkatarama Rao 24 M. 1 : 27 I.A. 197 : 4 C.W.N. 725 : 10

M.L.J. 221 : 2 Bom. L.R. 771 : 7 Sar. P.C.J. 678 : (P.C.). A similar view was taken in Golamali Jemadar v. Abdul Karim Sarkar 5 Ind. Cas. 182

: 11 C.L.J. 26 : 14 C.W.N. 244 and Kumar Sarat Kumar Roy v. Sripati Chatterjee 50 Ind. Cas. 119 : 23 C.W.N. 242.

2. Reference has been made by Mr. Ramadas for the appellant to Waghela Raisangji v. Shaik Masludin 13 B. 330 : 13 Ind. Jur. 391 : 7 Ind. Dec.

219; Ram Lal v. Kalka Prasad 10 Ind. Cas. 244 : 33 A. 566 : 8 A.L.J. 584; Waman Hari v. Hari Vithal 31 B. 128 : 8 Bom. L.R. 932;

Muthusawmy Pillai v. Shunmugasundaram Pillai 19 Ind Cas. 214 : 13 M.L.T. 225; Kishun Dayal Rai v. Kulpati Kuer 45 Ind. Cas. 316 : 3 P.L.J.

372 : (1918). As pointed out in Annamalai Chettiar v. Subramania Iyer 4 M.L.T. 86 the decision of the Privy Council in effect overrules the view

taken by the Bombay High Court in

4. Waghela Raisangji v. Shaik Masludin 13 B. 330 : 13 Ind. Jur. 391 : 7 Ind. Dec. 219 and the other decisions relied on by the appellant's Vakil

follow the decision in Waman Hari v. Hari Vithal 31 B. 128 : 8 Bom. L.R. 932 and do not consider the decision of the Privy Council in Kotaghiri

Venkats Subbamma Rao v. Vellanki Venkatarama Rao 24 M. 1 : 27 I.A. 197 : 4 C.W.N. 725 : 10 M.L.J. 221 : 2 Bom. L.R. 771 : 7 Sar. P.C.J.

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5. It is, in the view I take of the matter, unnecessary for me to decide whether the effect of the judgment of the Privy Council was to supersede the

judgment of the District Court in A. Section No. 194 of 1909. The view taken by Wallis, C.J., and myself in Zemindar of Pangidigudem v.

Venkatappayya 54 Ind. Cas. 647 has been dissented from by Ayling and Courts-Trotter, JJ., in Secretary of State for India v. Zemindarani of

Vegayammappeta Estate 59 Ind. Cas. 98 . The decision in Zemindar of Pangidigudem v. Venkatappayya 59 Ind. Cas. 98 : 12 I.W. 334 is before

the Privy Council and a definite pronouncement on the law will soon be made.

6. As the present application was made u/s 114 and Order XLVII of the CPC which relates to review of judgment it is unnecessary to consider, if,

assuming the decree of the Privy Council superseded the decree in A.S. No. 194 of 1909, an application u/s 151 of the CPC will be competent or

whether a separate suit will lie. I may state that the decision in Kotaghiri Venkata Subbamma Rao v. Vellanki Venkatarama Rao 24 M. 1 : 27 I.A.

197 : 4 C.W.N. 725 : 10 M.L.J. 221 : 2 Bom. L.R. 771 : 7 Sar. P.C.J. 678 was passed under the CPC of 1882 which contained no provision

analogous to Section 151 of the Code of 1908 and nothing in my judgment would affect the view that may be taken on an application u/s 151.

7. As I am of opinion that an application for review will not lie I dismiss the petition with costs.