
(1935) 08 MAD CK 0047
In the Madras High Court

G.V. Narayanasawmy Ayyar and Others

APPELLANT

Vs

Subramania Pillai

RESPONDENT

Date of Decision : 23-08-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : 159 Ind. Cas. 1028 : (1935) 42 LW 762

Hon'ble Judges : Cornish, J

Bench : Single Bench

Judgement

Cornish, J.—A few facts may be stated. The petitioners who were plaintiffs in the suit obtained an ex parte decree against defendant on July 27, 1933. This, as the lower Court has found, was after due service of summons upon the defendant. The defendant made application under Order IX, Rule 13 of the Code of Civil Procedure, to set aside the decree on June 15, 1934, that is to say, nearly one year afterwards. The application was, therefore, clearly out of time unless the defendant was able to satisfy the Court that he had only come by knowledge of the decree within thirty days before filing his application. But the lower Court has found that the defendant had knowledge of the decree on the date when it was passed, viz., July 27, 1933. The application was, therefore, hopelessly time-barred and should have been dismissed. But the lower Court for the reason that defendant said he had a good defence, set aside the decree on terms that defendant paid the taxed costs into Court by a specified date, and also paid the plaintiff Rs. 10 by the same date as his costs of the petition. It is hardly necessary to say that this order was one which the lower Court had no power to make. A Full Bench in *Neelaveni v. Narayana Reddi* 43 M. 94 : 53 Ind. Cas. 347 : 37 M.L.J. 599 : 26 M.L.T. 377 : 10 L.W. 606 : (1920) M.W.N. 19 has laid down that a Court has no power to set aside an ex parte decree apart from Order IX, Rule 13 and the reason given by the lower Court for setting aside the decree is certainly not to be found in the rule in question. But apparently the defendant complied with the condition, paid the taxed costs into Court where they still remain, and paid Rs. 10 to the plaintiffs' Vakils. From this circumstance it has

been contended that the plaintiffs must be deemed to have adopted the order of the Court and that he cannot now object to it. *Gadde Venkatarayudu v. Anumolu Chinna Ramakrishnayya* 58 M.L.J. 137 : 123 Ind. Cas. 337 is relied upon. I rather doubt whether the circumstances in which this Rs. 10 was received by the plaintiffs' Vakil can be regarded as an adoption of the order. But, however that may be, I have no doubt that an adoption of an order made without jurisdiction cannot have the effect of making that order one which the Court was competent to pass. The application was time-barred: the Court was bound to take notice of that fact and to act upon it. And the only order which the Court could have made upon it was to dismiss it (the application). The Civil Revision Petition is accordingly allowed and the order restoring the petitioners' suit is set aside with costs throughout, credit being given for Rs. 10 already received by the petitioner.