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**(1952) 09 MAD CK 0032**

**In the Madras High Court**

**Case No :** Original Side Appeal No. 80 of 1952

Hajee Mahomed Abdul Rahman

APPELLANT

Vs

Tajunnissa Begum and Another

RESPONDENT

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**Date of Decision :** 03-09-1952

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 151

**Citation :** AIR 1953 Mad 420 : (1953) ILR (Mad) 992 : (1953) 66 LW 40 : (1952) 2 MLJ 846

**Hon'ble Judges :** Rajamannar, C.J; Venkatarama Aiyar, J

**Bench :** Division Bench

**Advocate :** K. Rajah Ayyar and K. Kuppuswami, for the Appellant; K. Krishnaswami Iyengar and N.C. Raghavachari, for the Respondent

**Final Decision :** Allowed

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## Judgement

Venkatarama Aiyar, J.—This is an appeal against the order of Panchapakesa Aiyar J. directing the appellant to pay to respondent 1 a sum of Rs. 500 by way of interim maintenance pending the disposal of a suit on the Original Side of this Court. Respondent 1 in her plaint alleged that the appellant had married her in 1943 and that she continued to live with him for some time but that he latterly neglected her and did not maintain her and the relief prayed for is that defendant 1 be directed to pay arrears of maintenance and also future maintenance at the rate of Rs. 500 a month. The plaintiff also filed an application for an award of interim maintenance during the pendency of the suit. Defendant 1 contested the claim. He denied he ever married the plaintiff and disputed his liability to pay any maintenance. The application for award of interim maintenance came up before Panchapakesa Aiyar J. After taking some evidence, he properly declined to express any opinion on the merits of the case but directed that defendant 1 should pay to the plaintiff a sum of Rs. 500 as interim maintenance pending the final disposal of the suit. It is against that order that defendant 1 has preferred this appeal.

2. Mr. K. Rajah Aiyar, learned advocate for the appellant, contends that the Court had no jurisdiction to award interim maintenance in a case where the claim is contested. In -- "Latchanna Dora v. Malludora", 1940 2 Mad LJ 572, the facts were that the plaintiff filed a suit to recover possession of certain properties or in the alternative for partition, and during the pendency of the suit, he made an application for the award of interim maintenance to him. The District Judge awarded Rs. 250 a month. In revision, Horwill J. set aside that order on the ground that the Court had no jurisdiction to make such an order when the claim is in dispute. The learned Judge observed:

"In -- "Gopal Saran v. Sita Devi", 77 Ind Cas 718, a Divisional Bench of the Patna High Court held that a Court has no inherent power under S, 151 to pass such an order. That case was very like the present, in that the plaintiff sued on a maintenance agreement, and only differed from it in that the defendant there did not admit that the plaintiff was entitled to anything." The learned Judge also followed the decision of Jackson J. in -- "C. R. P. No. 1312 of 1930 (Mad)" where that Judge observed: "A Court cannot interfere with a private person's property merely because he happens to be a defendant, on behalf of another person merely because he happens to be a plaintiff. There is no inherent power in a Court to act without findings, so that if a matter is asserted by the plaintiff and denied by the defendant, the Court cannot presume that the plaintiff's allegations are true and give some interim relief pending disposal of the suit."

The following observations of Sir Dawson Miller C. J. in -- "Gopal Saran v. Sita Devi" 77 Ind Cas 718 (Pat) may be quoted:

"It seems to me that the only ground which would justify an order compelling the defendant to pay the annuity or a portion thereof to the plaintiff is that the defendant's liability on the bonds has been established. The liability, however, cannot possibly be determined until the evidence is taken and the suit heard and decided. There appears to be no ground disclosed in this case, and certainly no authority has been cited before us to justify the learned Subordinate Judge in passing an order granting the plaintiff a portion of the relief claimed before the suit has been tried, and in the absence of any authority supporting such a contention, it seems to me that we ought not to allow the present order to stand. Section 151 of the Code saves the Court's inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court, but I am not aware of any rule of law or equity, which requires, in the interests of justice, that a plaintiff suing to enforce a contract for the payment of money, where the claim is disputed, should be awarded a portion of the amount claimed before his rights has been established by the suit brought for that purpose."

In -- "C. R. P. No. 662 of 1950 (Mad)", Viswanatha Sastri J. adopted this principle and observed :

"It is true that the inherent powers of the Court are wide and undefined and

indefinable, but for that very reason a Court must be on its guard against an arbitrary or capricious exercise of that power. Section 151, Civil P. C. itself indicates the limitations on the exercise of the power, namely, that its exercise is necessary and further that it must secure the ends of justice or prevent the abuse of the process of the Court..... It is not right for any Court by passing an order in favour of one or other of the parties really to decide the suit or any part of the suit before it is tried"

and the learned Judge followed the authority of this Court in -- "Latchanna Dora v. Mallu Dora, 1940 2 Mad LJ 572.

3. Thus there is overwhelming authority for the position that when the claim made in the plaint is contested, the Court has no inherent jurisdiction to grant relief until that claim is determined on its merits and that can only be by the final hearing in the suit. To grant any relief in an interim application would be to grant the relief which can properly be granted only by the ultimate determination in the suit and the decree following thereon. The CPC confers certain powers on the Court to grant relief in interim proceedings such as for example, power to issue injunctions, attachments before judgments or appointment of receivers. Where such a relief is claimed the Code prescribes the conditions on which such relief could be granted. But apart from such powers, there is no inherent jurisdiction in Courts to grant interim relief which properly ought to be granted only by the decree after determination of the points in controversy. We are accordingly of opinion that the order of the learned Judge granting interim relief in the suit in which the claim of the plaintiff is hotly contested, was without jurisdiction. In the result, the appeal will be allowed and the order of the learned Judge will be set aside.

4. Both sides have represented to us that having regard to the nature of the contentions, it would be desirable to have an early determination of the suit. In C. S. No. 235 of 1951 the present respondent 1 claims an amount by way of mahr under the Muhammadan law. The defence in that suit is the same as that in the suit out of which this appeal has arisen viz., that the plaintiff was not the wife of defendant 1 and was not entitled to any claim by way of mahr. That suit will be posted for hearing on 10-11-1952. It is also desirable that the suit out of which this appeal has arisen, the maintenance suit, should, if possible, be tried with it but the hearing of C. S. No. 235 should not be delayed on account of any delay in the preparation of the maintenance suit. There will be no order as to costs in this appeal.