

(1892) 02 MAD CK 0017
In the Madras High Court

Ittithi Kunji Amma and Others

APPELLANT

Vs

Elayat Raman Menon and Others

RESPONDENT

Date of Decision : 24-02-1892

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13

Citation : (1892) 2 MLJ 262

Judgement

1. The only question we are called upon to determine in this appeal is whether the court which tried O. S. No. 28 of 1877 was competent to try

the present suit within the meaning of Section 13 of the Civil Procedure Code.

2. Original Suit No. 28 of 1877 was a suit instituted in the court of the Subordinate Judge on behalf of the Vadakunathan Devasom to recover

certain property from the family of the plaintiffs in the present suit. The main question for decision in that suit, as it is in the present suit, was,

whether the land in suit was the jemn of the Devasom or of the tarwad to which the plaintiffs belong. That was a suit on behalf of the Devasom, this

is a suit against the Devasom. It is argued that inasmuch as the Rajah of Cochin is a party-defendant in the present suit the Subordinate Court

which tried O. S. No. 28 of 1877 was not a court of jurisdiction competent to try the present suit and that therefore Section 13 has no application.

3. Original Suit No. 28 of 1877 was instituted in the Subordinate Court on the 6th August 1877, but it was not heard and determined until January

1878. Act X of 1877 came into force on the 1st October 1877 and by Section 433 it was enacted that a sovereign prince or ruling chief could not

be sued in any court subordinate to a District Court. It is in consequence of this provision of law that the present suit was instituted in the District

Court.

4. It has been argued that as at the time when O. S. No. 28 of 1877 was instituted there was no provision of law which prohibited the

entertainment of a suit against a sovereign prince by the Subordinate Court, the present suit was one which might have been instituted in the court

of the Subordinate Judge. The words of Section 13 are ""court of jurisdiction competent to try such subsequent suit"", and we are of opinion that the

only reasonable construction which can be placed upon these words is that they must be held to refer to the jurisdiction of the court at the time

when the suit was heard and determined. This is also the view of the Calcutta High Court, *Gopi Nath Chobey v. Bhugwat Pershad* I. L. R 10 C

697 and *Rughunath Panjah v. Issur Chunder Chowdhry*, I. L. R 11 C 153.

5. Are we then to hold that because the Subordinate Court was not competent to entertain the present suit by reason of the Rajah of Cochin being

a party-defendant, it is not a court of jurisdiction competent to try such within the meaning of Section 13? We think not. Those words have been

interpreted by their lordships of the Privy Council to mean a court having concurrent jurisdiction with the court trying the subsequent suit, whether

as regards the subsequent matter of the suit or the pecuniary limits of its jurisdiction, *Misir Raghobardial v. Shea Baksh Singh*, I. L. R 9 C 439.

6. It is not and cannot be contended that the court of the Subordinate Judge has not concurrent jurisdiction with the District Court both as regards

the subject-matter and the pecuniary limits of its jurisdiction; for, the jurisdiction both of the District Judge and of the Subordinate Judge extend to

all original suits and proceedings of a civil nature, Section 12 of Act III of 1873.

7. It is the ""matter in issue"" in the suit that forms the essential test of *res judicata*, *Pahlwan Singh v. Risal Singh*, I. L. R 4 A 55. The matter in issue

in the present suit, viz., within the cognizance of the Subordinate Court and it having been decided in the former suit, we do not think that the

plaintiffs are entitled by merely adding the Rajah of Cochin as a party-defendant to call upon the District Court to decide an issue which has

already been decided by a court of concurrent jurisdiction.

8. We are fortified in this opinion by the ruling of the Privy Council in the case of *Soorjomonee Dayee v. Suddanund Mohapatter*, 12 B. L. R 304.

That was a judgment with reference to the 2nd clause of Act VIII of 1859 which

corresponded with Section 13 of the present Act. Their lordships were of opinion that the term ""cause of action"" in that section was to be construed with reference rather to the substance than to the form of action.

9. This appeal therefore fails and must be dismissed with costs.