

(1905) 08 MAD CK 0003
In the Madras High Court

Jalasutram Lakshminarayana and Others	APPELLANT
Vs	
Zemindar ofVallur	RESPONDENT

Date of Decision : 29-08-1905

Acts Referred:

Citation : (1906) ILR (Mad) 42 : (1906) 16 MLJ 35

Judgement

1. The present suit is for the recovery of kattubadi for Faslis 1308 to 1310 stated to be due to the plaintiff, the Zemindar, by the defendants in

respect of certain Inam Unas held by them in the Zemindari. The District Munsif dismissed the suit on the ground that the present claim was res

judicata by the decision in A.S. No. 20 of 1900, but the District Judge reversed the decree being of opinion that there was no res iudicata.

2. We think the District Judge is right. In the previous suit in which the appeal decision referred to above was given, the present plaintiff sought to

recover from the present defendants the kattubadi for the same Inam for eleven faslies from 1295 to 1305. The papers connected with the original

trial of the former suit have been placed on the present record and what were the several issues framed and tried at such original trial does not

appear in the appellate judgment, the only document filed. The judge after stating that ""the defence was inter alia, that the suit was barred by

limitation and this question is the only one which need be considered in the appeal"", gave a finding in the affirmative basing his conclusion upon the

single circumstance that the plaintiff had not proved that he had collected any kattubadi within 12 years prior to the date of the suit. In thus

disposing of the case, the judge did not quote the article of the Limitation Act according to which he held the claim barred. The argument on behalf

of the appellant is that the decision in the appeal judgment quoted should be taken as if the Court had raised for its determination the issue whether the plaintiff's right to collect kattubadi had as a periodically recurring right become barred under Article 131 of the Schedule to the Limitation Act and found upon that question against the plaintiff. Now, with reference to the issue thus suggested, it would have been necessary for the Court, to have determined whether the plaintiff, was refused the enjoyment of the right for 12 years previously to the suit. The mere fact that no kattubadi had been collected for 12 years by the plaintiff did not necessarily imply that such non-collection was in consequence of a denial of the plaintiff's right to the kattubadi, and the finding in the appeal judgment relied on is thus in fact not one which would have determined the point essential for the adjudication of the question in regard to Article 131. Surely, it is neither competent nor proper for us to depart from the unequivocal statement in the judgment as to what was decided and, because such decision would by itself be unsound with reference to the reason assigned for it, to substitute something else quite different in order to make it seem right so as to enable one of the parties thereto to found a plea of res judicata thereon.

3. The contention fails, and the appeal is dismissed with costs.