
(1925) 09 MAD CK 0042
In the Madras High Court

K. Kaliba Sahib and Others

APPELLANT

Vs

Subbaroya Aiyar

RESPONDENT

Date of Decision : 01-09-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 46 Rule 1, Order 46 Rule 6

Citation : AIR 1926 Mad 365 : (1926) 23 LW 99

Judgement

1. This is a reference by the District Munsif of Negapatam under Order 46, Rules 1 and 6 of the Code of Civil Procedure, and the question

referred is in these terms:

Is not this Court competent to proceed with the trial of this suit in pursuance of the order of the District Court in C.M.A. No. 101 of 1923

preferred against the order of the Revenue Divisional Officer when this Court on its small cause side had already held that it had no jurisdiction to

try this suit ?

2. The suit was brought in the District Munsif's Court on its small cause side by the trustees of Nagore Durga for rent. The defendant contended

that the property in his possession formed part of an estate and that a civil Court had no jurisdiction to try the case. The District Munsif held that he

had no jurisdiction to try the case and directed that the plaint be returned to the plaintiffs for presentation to the proper Court. The plaint was

presented to the Revenue Divisional Officer and he held that the defendant was not a ryot under Act 1 of 1908 and directed the return of the plaint

to the plaintiffs. Against this order of the Divisional Officer the plaintiffs appealed to the District Court of Negapatam and the District Judge held

that the revenue Court had no jurisdiction and that the civil Court had

jurisdiction to try the case. The plaint was again presented to the District Munsif. The District Munsif was confronted with his previous order that the civil Court had no jurisdiction and the order of the District Judge that the revenue Court had no jurisdiction and that the civil Court had jurisdiction to try the case. The order of the District Court on appeal from the Revenue Divisional Officer is not binding on the District Munsif. The District Munsif evidently was under the impression that he being subordinate to the District Judge was bound by his order. The District Munsif acting as a Small Cause Judge is subject to the administrative control of the District Court u/s 28 of the Provincial Small Cause Courts Act, but he is not bound by an order of the District Judge passed in his judicial capacity on an appeal from the revenue Court. As we are of opinion that the order of the District Judge in C.M.A. No. 101 of 1923 is not binding upon the District Munsif, he is at liberty to pass any order he likes. Either party will be entitled to move the High Court against the order of the District Munsif and the decision of the High Court in revision will bind the District Munsif as well as the District Court. It is. Not necessary that the question referred to us should be answered at this stage.

3. The papers will be returned to the District Munsif.