
(1915) 07 MAD CK 0006
In the Madras High Court

K. Narayana Moothad et al.

APPELLANT

Vs

The Cochin Sirkar

RESPONDENT

Date of Decision : 12-07-1915

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 86

Citation : (1916) ILR (Mad) 661

Hon'ble Judges : Sadasiva Ayyar, J; Oldfield, J

Bench : Division Bench

Judgement

Oldfield, J.—The question in these appeals is whether His Highness the Rajah of Cochin was legitimately impleaded as a defendant in

connected suits in the absence of consent by the local Government u/s 86, Code of Civil Procedure.

2. It is urged firstly, that the absence of such consent is immaterial, because His Highness has waived his privilege by proceeding, after pleading it,

to plead also on the merits. I do not consider whether the course of his pleading did in fact amount to a waiver or not, because in my opinion the

recognition of cases of waiver, as excepted from the ordinary provision of International Law as understood in England, cannot be imported into the

clear language of the Indian Code. The contrary view was no doubt taken in Chandulal v. Awad bin Umar Sultan ILR (1897) 21 Bom. 351. But

with all respect I find the reasoning therein inconclusive and doubt whether reference to the supposed intention of the legislature is permissible or, if

permissible, whether it is sufficiently comprehensive.

3. Secondly, it is argued that the suits are really against the deity of the suit temple, represented by the Rajah, and that, as they are not against the

Rajah himself, the section is inapplicable. Reference to the complaints however shows that the suits are for relief against the Rajah and others on the

ground that the first mentioned has usurped the position of trustees and has used the power thus obtained to plaintiffs' prejudice. The suits are

therefore not against the deity, as represented by the Rajah.

4. In these circumstances the appeals fail and must be dismissed with costs.

Sadasiva Ayyar, J.

5. I entirely agree with the judgment just now pronounced by my learned brother. Mr. Ramachandra Ayyar relied on certain obiter dicta found in

the judgments of the learned Chief Justice and of Justice Seshagiri Ayyar in *Veeraraghava Iyer v. Muga Sait* ILR (1916) Mad. 24 for the

proposition that it is not enough merely to object to the jurisdiction to show that there was no voluntary submission by the defendant to the

jurisdiction of the Court. *Parry & Co. v. Appasami Pillai* ILR (1881) Mad. 407 distinctly held otherwise. The learned Chief Justice guardedly says

that because there are two English cases, *Boissieri v. Brockner* ILR (1889) 85 and *Guiard v. DeClermont and Donner* ILR (1913) 511 which

hold that such mere objection is insufficient, *Parry & Co. v. Appasami Pillai* (1881) 2 Mad. 407 is probably no longer law. Seshagiri Ayyar, J.,

first says that he would hesitate to follow owing to the decision of Cave, J., in the former case; the learned Judge then says that "the conditions of

existence in this country may not justify the application of the principle enunciated by Cave, J.", and finally says that it was "unnecessary to decide

in that particular case "which of the two " conflicting decisions *Parry & Co. v. Appasami Pillai* (1881) 2 Mad. 407 or *Boissieri v. Brockner*(3)

should be followed. I am prepared to follow *Parry & Co. v. Appasami Pillai* ILR (1881) Mad. 407 as it has not been overruled and as the

reasoning therein seems to me sound; I am not prepared to follow the English cases contra.

6. I agree that the appeals should be dismissed with costs.