

(1925) 08 MAD CK 0023
In the Madras High Court

K. Venkatanarasimha Rao

APPELLANT

Vs

Hemadri Suryanarayana

RESPONDENT

Date of Decision : 24-08-1925

Acts Referred:

Citation : AIR 1926 Mad 325 : (1926) 23 LW 409 : (1926) 50 MLJ 75

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—The only question that arises here is whether Order 9 applies only to suits or whether, by reason of Section 141, it also applies

to applications made under Order 9 itself. In this case an application to restore a suit was dismissed for default and a subsequent petition was filed

to set aside that dismissal. The subsequent petition has been allowed and the original petition under Order 9 is now under enquiry.

2. The contention for the appellant is that the Court had no jurisdiction to treat the second application as one to which Order 9 is applicable. In

Thakur Prasad v. Fakir Ullah ILR (1894) All 106 it was laid down by the Privy Council that Section 647 of the Code of 1882, which is equivalent

to Section 141 of the present Code, included original matters in the nature of suits, such as proceedings in Probate, Guardianship, and so forth,

and did not include executions. The question at issue in that suit was whether execution petitions were included in that section and it was definitely

laid down that they were not so included. What was held to be included were original matters in the nature of suits, but this statement is not

exhaustive. It is argued that an application under Order 9 is not an original matter in the nature of a suit. It certainly is not a petition in a suit, for the

suit is no longer on the file. It relates to a question quite independent of the suit and one which has to be determined on evidence as to matters

which would be quite irrelevant to the suit. In this sense it seems to me to come within the meaning of the Privy Council's observations that Section

647 includes original matters in the nature of suits. This view has been taken by the Calcutta High Court in *Bepin Behari Shaha v. Abdul Barik* ILR

(1916) Cal 950 by the Lahore High Court in *Abdul Rahman Shah v. Shahanna* ILR (1919) Lah. 339 and by the Bombay High Court in *Lallubhai*

Vajeram v. Bai Magangavari ILR (1893) 18 Bom. 59. There is one authority to the contrary, i. e., *Ramgulam Singh v. Sheo Deonarain Singh*

(1919) 4 P LJ 287 which purports to follow a Full Bench of that Court reported at p. 133 of the same volume, but that Full Bench ruling in effect

only repeated the decision of the Privy Council in *Thakur Prasad v. Fakir Ullah* ILR (1894) All 106 where the question for determination was

whether an execution petition would come under Order 9. The Division Bench which purported to follow the Full Bench ruling have not discussed

the question at length but merely purport to follow the Full Bench, with all respect, hardly covered the point in issue. With all respect I agree with

the rulings I have mentioned above and hold that the Court had jurisdiction to entertain this petition.

3. The revision petition must therefore be dismissed with costs.