

(1901) 05 MAD CK 0001
In the Madras High Court

Kamal Kutti

APPELLANT

Vs

Ibrayi and Another

RESPONDENT

Date of Decision : 02-05-1901

Acts Referred:

Citation : (1901) ILR (Mad) 658

Hon'ble Judges : Shephard, J;Benson, J

Bench : Division Bench

Judgement

Benson, J.—The defendants were, in the absence of proof of "fraud, bound by the decree obtained against their karnavan who was sued as

senior member and manager for the tarwad as found by this Court in Kamalakutti v. Bipathumma Appeal against Order No. 107 of 1898

(unreported), Vasudevan v. Sankaran ILR 20 Mad. 129. If they are bound by the decree it is difficult to see on what principle they can be treated

as strangers to the decree for the purposes of execution. If the decree can be executed against them does not this imply that they are parties or

representatives of parties? I can see no reason why their claim should not be considered to have been dealt with u/s 244 of the CPC as held by

this Court in Kamalakutti v. Ibrayi Civil Revision Petition No. 421 of 1898 (unreported). To allow them to make a claim as strangers u/s 278 of

the CPC seems to be inconsistent with their being bound by the decree and with the policy of Section 245 and of the decision in Vasudevan v.

Sankaran ILR 20 Mad. 129 therefore, think that the decree of the District Judge was right, and that this appeal should be dismissed with costs.

2. If the plaintiff suffers any hardship by this result it is because he has erroneously asked for the revision of the District Judge's order of the 26th

October 1898 instead of appealing against it, within the time allowed by law, as he ought to, and no doubt would have done, if he had not failed to

see that the order was passed u/s 244 instead of u/s 278 of the Code of Civil Procedure.

3. When the mistake was pointed out in the High Court, I should suppose that the plaintiff might have asked the Court to treat his revision petition

(No. 421 to 1898) as an appeal, paying any stamp duty necessary. As he did not do this, I fear he must take the consequences of having mistaken

his remedy.

Shephard, J.

4. I concur, though I must say that I have had considerable doubt about the question.