

(1891) 04 MAD CK 0016
In the Madras High Court

Kamath Chathappan Nair

APPELLANT

Vs

Edavalath Vammeri Pydel Nambiar

RESPONDENT

Date of Decision : 06-04-1891

Acts Referred:

Citation : (1896) 6 MLJ 555

Judgement

1. The question whether the decree as amended is binding on the appellant was decided in the affirmative as between him and the decree-holder in. C.M.P. No 319 of 1888. The matter is therefore res judicata, as it is the same decree which is now under execution though the property attached is different. The decision in "Parthasaradi v. Chinnakrishna ILR (1882) M. 304 does not apply.

2. It has been further argued that the decree amended was not the final decrea passed in O.S. No. 162 of 1878, and the decree of the Appellate Court was the one which should have been amended. We are referred to several decided cases in support of this contention, and especially to the decision in Muhammad Sulaiman Khan v. Muhammad Yar Khan ILR (1888) A. 267 in which the decision in Sundara v. Subbanna ILR (1886) 9 M. 351 was dissented from.

3. Were the question not res judicata for the purpose of the execution of the amended decree, we should have been inclined to refer to the Full Bench the question of the correctness of the ruling in Sundara v. Subbanna ILR (1886) M. 351.

4. We must dismiss the appeal, but under the circumstances we will make no order as to costs in this Court.