

(1925) 12 MAD CK 0030
In the Madras High Court

Koochu Aiyar alias Venkatasubbaier

APPELLANT

Vs

Vengu Ammal and Another

RESPONDENT

Date of Decision : 02-12-1925

Acts Referred:

Citation : AIR 1926 Mad 407 : (1926) 23 LW 728 : (1926) 50 MLJ 432

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—The respondents now agree to the second appeal being allowed and they admit that the succession certificate has been rushed but plead that they are not liable for costs as the decrees in the Courts below were obtained on the footing of the Succession Certificate which was then subsisting.

2. Mr. Ananthakrishna Aiyar argues that, even on the footing of the succession certificate, he could plead and prove payment before the grant of the certificate to the person lawfully entitled and the decision of the Courts below is wrong. I agree with him. The decisions relied on by the Courts below do not support the view taken by them. In Damothar Pachapurkar v. Zinga Kom Kandkia (1870) Bom.HCR 31 the plea was not that the payment was made to a person (other than the holder of the certificate but) really entitled to collect the debt. Whether it is correctly decided or not, it did not deal with the question arising in this case. In Muthiah Chettiar v. Ramanathan Chatiar (1918) MWN 242 there was no plea of payment to another and the sentence relied on is a mere casual observation and was not meant to decide any point arising in the case In Meenatchee Achi Vs. Ananthanarayana Aiyar and Another, no payment to another was pleaded. The only question was who should continue the suit of the creditor who died during its pendency. The widow produced a succession certificate and claimed to proceed with it. The defendant said that the undivided brother of the deceased was the proper party but he disclaimed any such right. The point arising now did not arise there. On the other hand the case in Purshotam Mansukh v. Ranchhod Purshotam (1871) 8 Bom. HCR 152 (a decision of Westropp, C.J., Melvill, Gibbs

and West, JJ.) decides that the debtor can show that he paid to the person really entitled to receive though not to the holder of the certificate, before the grant of the certificate. In my opinion this case lays down the correct principle and I agree with it, and hold that where the debtor has paid the debt before the grant of the certificate to the person really entitled to the debt (other than the holder of the certificate), it affords a complete defence to the suit by the certificate-holder. The only effect of Section 16 of the Act is if the debt remained unpaid up to the grant of the certificate, the certificate is conclusive and compels the debtor to pay it to the certificate holder. See *The Oriental Government Security Life Assurance Company, Ltd. v. Ventedu Amiraju and Ors.* (1911) 1 MWN 276

3. The District Munsif ought to have made the defendant's wife a party and framed an issue as to the genuineness of the will and then tried the case and the other suit together, instead of this, he made a suggestion which, if not actually absurd, verges on it. The defendant's petition to make his wife a party was dismissed erroneously.

4. Apart from all this, there is no bona fides in the plaintiff's claim. Her main object was to attack the will which has now been found genuine. Her attack against the will was frivolous having regard to the history of the family and of the circumstances under which the will was executed.

5. The second appeal is allowed and the plaintiff must pay the costs of the appellant in all the three Courts.