

(1893) 09 MAD CK 0006
In the Madras High Court

Krishnaya Navada and Others

APPELLANT

Vs

Panchu and Others

RESPONDENT

Date of Decision : 18-09-1893

Acts Referred:

Citation : (1894) ILR (Mad) 187

Hon'ble Judges : Arthur J.H. Collins, C.J; Davies, J

Bench : Division Bench

Judgement

1. If the order is an order u/s 562 of the Code of Civil Procedure, as contended for by appellants, it is clearly bad, as the original Court had not

disposed of the suit on a preliminary point. The course the Judge should have adopted in order to ascertain the boundaries of the plaint land, if that

information was necessary, was to have sent down an issue on the point for trial u/s 5661 of the Code.

2. It is however contended on the other side that the order was one merely for the amendment of the plaint in the matter of boundaries and was

passed u/s 582 of the Code as an order that should have been passed by the original Court. But the answer is that there was no dispute as to the

boundaries of the land before the original Court, and, therefore, that that Court could have had no ground for returning the plaint for amendment.

We are of opinion that this fact takes the case out of the purview of Section 582 even if that section is at all applicable. It follows that the remand

must have been u/s 562, and as such it was an illegal order. We, therefore, reverse it and direct the Judge to dispose of the appeal on its merits.

1.

Section 566: If the Court against whose decree the appeal is made has omitted to

frame or try any issue, or to determine any question of fact,

When Appellate Court which appears to the Appellate Court essential to the right may frame issues and refer decision of the suit upon the merits, and the evidence upon the

them for trial to Court record is not sufficient to enable the Appellate Court to deter-

whose decree appealed mine such issue or question, the Appellate Court may frame issues

against. for trial, and may refer the same for trial trial to the Court

against whose decree the appeal is made, and in such case shall

direct such Court to take the additional evidence required,

and such Court shall proceed to try such issues, and shall return to the Appellate Court

its finding thereon together with the evidence.