

(1896) 11 MAD CK 0006
In the Madras High Court

Kumarasami Pillai

APPELLANT

Vs

Orr and Another

RESPONDENT

Date of Decision : 03-11-1896

Acts Referred:

Citation : (1897) ILR (Mad) 145

Hon'ble Judges : Subramania Ayyar, J;Boddam, J

Bench : Division Bench

Judgement

1. If the plaintiffs have, in fact, suffered any damage from a neglect of a duty imposed by statute on the kamam, they are entitled to bring a suit to recover such damage.

2. Section 11 of Regulation XXV of 1809 does not restrict or take away this right. As regards that portion of the plaintiffs' action, which relates to

their claim to remove the kamam from his office, the first question is whether the plaintiffs in their right as lessees (independently of the clause in

their lease purporting to transfer to them the right to bring such a suit) can maintain that portion of their claim. Section 11 clearly gives this power

to the zamindar or proprietor and to no one else. Inasmuch, therefore, as the plaintiffs' assignment does not make them proprietors or zamindars

within the meaning of the Regulation, they cannot sue.

3. Section 5 of Regulation XXIX of 1802 cannot be read as conferring a general right to bring such an action on any person interested, but must

be read in conjunction with section 11 of Regulation XXV already referred to.

4. The next point raised by plaintiffs' counsel was that the zamindar had, by a special provision in the plaintiffs' lease, assigned to the plaintiffs the

right to bring a suit to remove karnams and therefore the plaintiffs were entitled to maintain this part of their claim.

5. Having regard to the nature of the power in question, we think it was not one which could be transferred. Delegate potest as non potest

delegari.

6. We therefore think that plaintiffs cannot maintain so much of their action as relates to the removal of the defendant from his office. The order of

the District Judge remanding the suit for trial, so far as the plaintiffs' right to claim for damages is concerned, is right. It must, however, be modified

as to the remainder of the claim and the suit to this extent be dismissed.

7. Each party must bear their own costs of this appeal.