
(1915) 07 MAD CK 0046
In the Madras High Court

Kuthaledath Narayana Moothod and Others

APPELLANT

Vs

The Cochin Sircar

RESPONDENT

Date of Decision : 12-07-1915

Acts Referred:

Citation : AIR 1916 Mad 835 : 30 Ind. Cas. 511 : (1915) 2 LW 637

Hon'ble Judges : Sadasiva Aiyar, J; Oldfield, J

Bench : Division Bench

Judgement

Oldfield, J.—The question in these appeals is whether His Highness the Rajah of Cochin was legitimately impleaded as a defendant in the connected suits in the absence of consent by the Local Government u/s 86, Code of Civil Procedure.

2. It is urged, firstly, that the absence of such consent is immaterial, because His Highness had waived his privilege by proceeding, after pleading it, to plead also on the merits. I do not consider whether the course of his pleading did in fact amount to a waiver, because, in my opinion, the recognition of cases of waiver, as excepted from the ordinary provisions of international law as understood in England, cannot be imported into the clear language of the Indian Code. The contrary view was, no doubt, taken in *Chandulal Khushalji v. Awad bin Umar Sultan Nawaz Jung Bahadur* 21 B.k 351. But with all respect I find the reasoning therein inconclusive and doubt whether the reference to the supposed intention of the Legislature is permissible or, if permissible, whether it is sufficiently comprehensive.

3. Secondly, it is argued that the suits are really against the deity of the suit temple, represented, by the Rajah, and that, as they are not against the Rajah himself, the section is inapplicable. Reference to the plaints shows that the suits are for relief against the Rajah and others, on the ground that the first mentioned has usurped the position of trustee and has used the power thus obtained to plaintiffs' prejudice. The suits are, therefore, not against the deity, as represented by the Rajah.

4. In these circumstances the appeals fails and must be dismissed with cost.

Sadasiva Aiyar, J.

5. I entirely agree with the judgment just now pronounced by my learned brother. Mr. Ramachandrier relied on certain obiter dicta found in the judgments of the learned Chief Justice and of Justice Seshagiri Aiyar in the case of Veeraraghava Iyer v. Muga Sait 26 Ind. Cas. 287 : 27 M.L.J. 535 : (1915) M.W.N. 162 for the proposition that it is not enough merely to object to the jurisdiction to show that there was no voluntary submission by the defendant to the jurisdiction of the Court. The case of Parry and Co. v. Appasami Pillai 2 M.k 407 : 5 Ind. Jur. 188 distinctly held other-wise. The learned Chief Justice guardedly says that, because there are two English cases, Boissiere and Co. v. Brockner and Co. (1889) 6 T.L.R. 85 and Guiard v. DeClermont and Donner (1914) 30 T.L.R. 511 which hold that such mere objection is insufficient, Parry and Co. v. Appasami Pillai 5 Ind. Jur. 188 "is probably no longer law." Seshagiri Aiyar, J., first says that he would hesitate to follow Parry and Co. v. Appasami Pillai 5 Ind. Jur. 188 owing to the decision of Cave, J., in the former case; the learned Judge then says that "the conditions of existence in this country may not justify the application of the principle enunciated by Cave, J.," and finally says that it was unnecessary to decide" in that particular case which of the two" conflicting decisions Parry and Co. v. Appasami Pillai 5 Ind. Jur. 188 or Boissiere and Co. v. Brockner and Co. (1889) 6 T.L.R. 85 should be followed." I am prepared to follow Parry and Co. v. Appasami Pillai 5 Ind. Jur. 188 as it has not been overruled and as the reasoning therein seems to me sound and I am not prepared to follow the English cases contra.

6. I agree that the appeals should be dismissed with costs.