
(1917) 08 MAD CK 0042
In the Madras High Court

Mediseti Venkatasami

APPELLANT

Vs

Kunchalla Chidambaram and Others

RESPONDENT

Date of Decision : 08-08-1917

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : 45 Ind. Cas. 671

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

Bench : Division Bench

Judgement

1. An important question of law as to interpretation of Section 47 of the CPC (with the new explanation added by the Code of 1908) is involved in this appeal. The contention of Mr. Venkataramana Rao for the respondents is that the case, Krishanappa Mudaly v. Periaswamy Mudali 38 Ind. Cas. 297 : 21 M.L.T. 121 : 40 M. 964, relied on by the appellant is opposed to the Full Bench decision in Ramaswami Sastrulu v. Kameswaramma 10 M.L.J. 126. and to the plain language of the explanation to Section 47 of the CPC and ought not to be followed. We agree with Mr. Venkataramana Rao's contention, and we do not think that the anomaly pointed out at page 123 (1st column) of the 21 Madras Law Times Report is sufficient reason for overriding the plain legislative provision, which was apparently introduced in the new Code for the express purpose of enacting as law the views expressed in the decisions of the Bombay and Madras High Courts on the old Section 244 (corresponding to the present Section 47) and embodied in the Full Bench decision in Ramaswami Sastrulu v. Kameswaramma 23 M. 361, and of overruling by statutory enactment the decisions contra of the other High Courts on the question, whether a defendant whose name appears in the decree without having been struck off previously from the record is a party with respect to whom the prohibition of a separate suit enacted in Section 47 (old Section 244) applies, notwithstanding that he had been exonerated by the decree passed in the suit without an adjudication on the controversial questions between him and the plaintiff.

2. The second appeal is, therefore, dismissed with costs.