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**(1942) 11 MAD CK 0036**  
**In the Madras High Court**

Muhammad Yusuf Sahib

APPELLANT

Vs

The Province of Madras

RESPONDENT

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**Date of Decision :** 16-11-1942

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 63, 80

**Citation :** AIR 1943 Mad 341 : (1943) 1 MLJ 251

**Hon'ble Judges :** Somayya, J

**Bench :** Division Bench

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## Judgement

Somayya, J.—The decision of this Court reported in *Rajah of Ramnad v. Subramaniam Chettiar* I.L.R.(1928) Mad. 465 is directly in point. There a suit was filed against a minor who was a ward of the Court of Wards. The suit was decreed against him and there were a number of appeals and the appeal in which this question arose was Appeal No. 57 of 1918. That is dealt with on pages 483 and 484 of the report. The objection raised was that no notice had been given to the ward, as provided u/s 49(1) of the Court of Wards Act and that therefore the decision of the lower Court should be reversed. Then their Lordships stated thus:

This suit has, however, been brought under Order 21, Rule 63, to set aside the order of Court dismissing the plaintiff's claim petition and it must be deemed to be a continuation of those proceedings and therefore no fresh notice to the appellant is necessary. The argument that a suit may be a continuation of the prior proceedings when the claim is allowed but is not such continuation when the claim is dismissed, is based on no recognised principle and appears to be untenable. In fact, in (1907) L.R. 35 I.A. 22 (Privy Council) for the purpose of court-fee, a similar suit was deemed to be a continuation of the prior proceedings when the suit was brought after the claim petition had been dismissed.

Now on a reference to Section 49. (1) of the Court of Wards Act it appears to me that the same decision must govern the present suit u/s 80 of the Code of Civil Procedure. Section 49 (1) runs thus:

No suit relating to the person or property of any ward shall be instituted in any Civil Court until the expiration of the two months after notice in writing has been delivered to or left at the office of the District Collector specified in the notification u/s 19 or the Collector appointed u/s 46, as the case may be.

Section 80 of the CPC runs thus:

No suit shall be instituted against the Crown or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to or left at the office of:

(a) in the case of a suit against the Central Government a Secretary to that Government; \* \* \* \*

(c) in the case of a suit against a Provincial Government, a Secretary to that Government or the Collector of the District.

So far as the point under consideration is concerned, the two Acts are similarly worded.

2. For the respondent, reliance was placed on the decisions of this Court in *Donepudi Subramanyam v. Narasimham* (1928) 56 M.L.J. 489 and in *Rangaswami Goundan v. Errappa Gounder* (1934) 67 M.L.J. 426. In the first of these cases the question was whether in a suit by a decree-holder against whom an order was passed in the claim proceedings he was bound to take the leave of the Insolvency Court, the judgment debtor having been adjudicated an insolvent, before filing the suit under Order 21, Rule 63, Civil Procedure Code. The argument was that the suit was only a continuation of the claim proceedings. Wallace, J., dealt with the question and held that the suit was not a continuation of the claim proceedings and that leave of the Insolvency Court was necessary but on other points held in favour of the respondent who raised this question. Strictly the observations of Wallace, J., were obiter. The other learned Judge held that the leave of the Insolvency Court was not necessary on other grounds. Further, no reference is made to the decision in *Rajah of Ramnad v. Subramaniam Chettiar* I.L.R.(1928) Mad. 465 ; evidently, it was not brought to their notice.

3. The other decision related to a suit u/s 14 of the Survey and Boundaries Act; and there was no question of the suit being considered to be a continuation of a claim order.

4. Happell, J., before whom a question u/s 14 of the Survey and Boundaries Act arose in *The Province of Madras Vs. Sri Sri Sri Vikrama Deo Varma Maharajulungaru, Maharaja of Jeypore and Zamindar of Madgole*, pointed out the distinction between the cases of Order 21, Rule 63 and Section 14 of the Survey and Boundaries Act and on that ground distinguished the decision in *Rajah of Ramnad v. Subramaniam Chettiar* I.L.R.(1928) Mad. 465.

5. I am bound by this decision of a Bench of two Judges which is directly applicable to this case and hold that no notice was necessary.
6. The result is that the decrees of the lower Courts are set aside and the suit remanded for trial on the merits. The appellant is entitled to the costs in all the Courts up to date and the further costs will be provided for by the trial Court in its final judgment. Time for payment of costs--three months.
7. Leave refused.