
(1924) 07 MAD CK 0031
In the Madras High Court

Muppavarapu Venkata Radhakrishna Rao and Another APPELLANT
Vs
Venthurumilli Venkata Rao and Others RESPONDENT

Date of Decision : 29-07-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23

Citation : (1925) ILR (Mad) 713 : (1924) 20 LW 711 : (1924) 47 MLJ 552

Judgement

1. Mr. Rajah Aiyar for respondents raises a preliminary point that no appeal lies.

2. The first Court heard and decided the case before it fully on all issues. The lower Appellate Court permitted the plaint to be amended before it and remanded the case for trial on the amended plaint to the first Court. This order of remand clearly cannot be brought within Order 41, Rule 23, Civil Procedure Code, even in its widest interpretation as laid down by the Full Bench in Malayath Veetil Raman and Others Vs. C. Krishnan Nambudripad (dead) and Krishnan Nambudripad, legal representative of the deceased, Nevertheless the only course open to an Appellate Court which permits before it an amendment of the plaint is to remand the case for trial to the first Court vide Uzir Ali Sardar v. Savai Behara ILR (1916) C 938. and Narottam Raja Ram v. Mohan Lal Khan Das ILR (1912) B 289. Here then we are confronted with a legal order of remand which does not come within the purview of Order 41, Rule 23, and cannot therefore subscribe to the contention of the appellant that such an order is unjustified in law. Now it is only orders of remand passed under Order 41, Rule 23, which are subject to appeal. The present order which is not passed under that section, but under the inherent power of the Court, see Section 151, is not appealable. Our view is supported by a Bench of this

Court in the case reported in A.T.S.P. Anthappa Chetty Vs. Ramanathan Chetty, . Our attention has been called by the appellant to the decision in

Malayandi Goundan v. Bomman Poosari (1922) 17 LW 159. but we do not consider that case lays down more than this, that the inherent power

of the Court to remand, if existent at all, should not be exercised in any case in which another procedure; more definitely laid down by the Code,

may be followed. Appellant has also relied on certain observations by the referring Judges in Malayath Veetil Raman and Others Vs. C. Krishnan

Nambudripad (dead) and Krishnan Nambudripad, legal representative of the deceased, , but in the judgment in that case, all the Judges were

careful to restrict their judgment to the application of Order 41, Rule 23, to the case before them, to which they all agreed it applied. That case

does not therefore help the appellant. The case of the Lahore High Court quoted in Mahmud Shah v. Talab Hussain Shah 73 IndCas 915 : (AIR)

1924 Lah 245 is exactly in point and we agree with the views therein expressed.

3. The appeal is, therefore, incompetent and is dismissed with costs.