
(1947) 11 MAD CK 0010
In the Madras High Court

Mythili Ammal and Others

APPELLANT

Vs

R. Mahadeva Ayyar and Others

RESPONDENT

Date of Decision : 17-11-1947

Acts Referred:

Citation : AIR 1948 Mad 433 : (1948) 61 LW 436 : (1948) 1 MLJ 400

Hon'ble Judges : Satyanarayana Rao, J

Bench : Division Bench

Judgement

Satyanarayana Rao, J.—This revision petition is against the order of the learned Subordinate Judge of Cuddalore granting leave to the first

respondent to sue as a pauper. Three questions were raised before the learned Subordinate Judge by the con-testing respondents: (1) Whether the

applicant was a pauper; (2) whether the allegations in the application show a cause of action; (3) whether the suit is barred by law. On all the three

points the learned Judge found in favour of the applicant and granted leave. So far as points 1 and 2 are concerned there is no ground for

interference in revision here. So far as the third point is concerned the learned Judge, in my opinion, has not correctly interpreted the provision in

Order 33 Rule 5, Clause (d-1) and Rule 6 of the Civil Procedure Code. The view of the learned Judge is that this question also can be decided

only on the bare allegations in the petition and that the contesting respondents were not entitled to adduce any evidence. The rule as amended by

our Court, clearly says that "" where the suit appears to be barred by any law the petition should be rejected "" and liberty is given under Rule 6 to

adduce evidence not only to the applicant but also to the contesting respondents. It would therefore be open to them to show that the suit is barred

either by res judicata or by limitation. The learned Judge, therefore, is not justified in shutting out evidence on behalf of the respondents. These rules have also been construed in two decisions of our Court, the earlier one being Ramaswami Udayar v. Karuppan Chettiar alias Saminatha Chettiar, judgment of Horwill, J., in C.R.P. No. 1055 of 1945 and the other being Venkatappa Bhatta v. Ramayya Bhatta, judgment of Rajamannar, J., in C.R.P. No. 10 of 1946. The learned Judge in the Court below relied upon the decisions of our Court which considered the point under the unamended Rule 5 of Order 33. Needless to say that those decisions have no bearing in view of the alteration in the rule. The result is that this revision petition is allowed and the decision of the learned Subordinate Judge on point 3 is set aside and the original petition is remanded for disposal on that point in the light of the observations contained in the judgment. The costs of this civil revision petition will abide and follow the result.