

(1894) 12 MAD CK 0010
In the Madras High Court

Nagamoney Mudaliar

APPELLANT

Vs

Janakiram Mudaliar

RESPONDENT

Date of Decision : 05-12-1894

Acts Referred:

Citation : (1895) ILR (Mad) 142

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

Best, J.—This is an appeal against the order of Mr. Justice Shephard, deciding against the defendant, the preliminary issue "whether this

Court has jurisdiction in the case, the mortgaged property being alleged to be situated beyond the Court's local jurisdiction.

2. The learned Judge says, "In the face of the leave which stands uncanceled I must decide for plaintiff.

3. The cases cited before the learned Judge appear to have been De Souza v. Coles 3 M.H.C.R. 384 and Vythelinga Mudelly v. Cundasawmy

Mudelly 8 M.H.C.R. 21

4. In the former it was held that an appeal lies from the decision of a Judge refusing an application made under Clause 12 of the Letters Patent for

leave to institute in this Court a suit on a cause of action which arises in part only within the local limits of this Court's jurisdiction. In Vythelinga

Mudelly v. Cundasawmy Mudelly 8 M.H.C.R. 21 it was held that where such an application was refused by one Judge, it was not proper for

another Judge in Chambers to grant the application when renewed on precisely the same grounds.

5. The above two decisions are authority for the propositions (1) that an order of

a Judge refusing an application under Clause 12 of the Letters

Patent is appealable, and (2) that such order of refusal by one Judge cannot be superseded by another Judge in Chambers. But neither of them is

in point when the question is whether an order granting permission to institute a suit under Clause 12 may form the subject of an issue for trial in the

suit so instituted.

6. In the present case the leave to sue was granted by the Registrar in exercises of the power conferred on him under Sections 637 and 652 of the

CPC ""and all other powers thereunto enabling;"" see appendix 1 of the rules published in the Fort St. George Gazette Supplement, dated 16th Juno

1891.

7. The order was passed ex parte without even issue of notice to the defendant.

8. Under these circumstances it seems to me that defendant was entitled to take the objection in his answer to the plaint, and that the question is

one that should be decided as an issue in the suit.

9. I would, therefore, allow this appeal and setting aside the order of the learned Judge, remand the issue for disposal on the merits.

10. The cost of this appeal will abide and follow the result.

Muttusami Ayyar, J.

11. I concur.