

(1893) 10 MAD CK 0003
In the Madras High Court

Naranayyan

APPELLANT

Vs

Nageswarayyan

RESPONDENT

Date of Decision : 03-10-1893

Acts Referred:

Citation : (1894) ILR (Mad) 389

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

Bench : Division Bench

Judgement

1. We are of opinion that the decision of the Judge cannot be supported.
2. It is not necessary, for the purposes of this suit, to determine whether it is open to the plaintiff in a suit brought u/s 283 of the CPC to ask for consequential relief in addition to a declaration establishing his right to the property. If it were necessary to decide the question, we should certainly hold that even a plaintiff could do so, and thus avoid a multiplicity of suits. Such is also the opinion of Jardine and Telang, JJ. in Sadu Bin Raghu v. Ram Bin Govind ILR 16 Bom. 608
3. The question before us is whether a defendant in such a suit is precluded from showing that the decree, in execution of which the property in dispute was attached, was collusively obtained. Such a defence would not be ordinarily available or necessary when the defendant is an utter stranger, in no way connected with the judgment-debtor, unless, it may be, the decree makes the debt a charge on the property claimed. In the present case, however, the Munsif considered the defendant interested in setting up the defence either as reversionary heir of the judgment-debtor's husband Seetharamiah or as a coparcener of his. We are unable to hold that such a defence is not open to a party interested in making it

in a suit brought u/s 283. We do not see our way to following the decision in Gulibai v. Jagannath Galvenkar ILR 10 Bom. 659 as in our opinion

Section 283 does not introduce an exception to the rule that the defendant is bound to set up every defence available to him. Moreover, we think it

unreasonable that he should be compelled to submit to a decree that may result in his eviction and thus have to bring a fresh suit for restoration.

4. We must observe, however, that the defence is only available to the defendant if he is interested as mentioned above.

5. We set aside the order of remand and send back the appeal to the District Judge for disposal with reference to the foregoing observations.

6. The costs of this appeal will abide and follow the result.