

(1924) 03 MAD CK 0058
In the Madras High Court

Narano Mahapatro and Another

APPELLANT

Vs

Sri Ramachandra Mardaraja Deo Garu

RESPONDENT

Date of Decision : 10-03-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1925 Mad 357

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—In this case the plaintiff sought to recover a sum of Rs. 12 and odd on account of jodi on an enfranchised inam for faslis

1326 and 1327. The first defendant pleaded that he was not liable to pay any jodi. The question that was considered in the first Court was whether

the plaintiff is entitled to the jodi claimed. On the evidence before the first Court it came to the conclusion that the plaintiff was not entitled to claim

the jodi and so dismissed the plaintiff's suit. On appeal the District Judge agreed with the judgment of the first Court on the question whether the

defendants were liable to pay the jodi claimed but reversed it on a question of res judicata which was not raised by the parties in the first Court. As

against this decision the Second Appeal and the C.R.P. have been filed in this Court by the defendants.

2. It is obvious that no Second Appeal lies and this is admitted by the learned Vakil for the appellants himself. But he asks the interference of this

Court u/s 115, CPC on the ground that a material irregularity has been committed by the lower Court in reversing the judgment of the first Court

on a new question which was not raised by the parties and for which there are no sufficient materials before the Court., In my opinion it was nod

right on the part of the appellate Judge to have disposed of the case on this new question, The decision as to res judicata was based by the Judge on two exparte decisions passed by a Small Cause Court on prior occasions with reference to payment of the jodi during four faslis. These judgments were availed of as pieces of evidence in connection with the question whether the plaintiff was entitled to claim the jodi. No attempt was ever made to build up a question of res judicata in these judgments. Except the decree we have no other record before us relating to these decisions which were passed by the Small Cause Court. In a case of this kind where a question of res judicata is sought to be raised, one would naturally expect that the Court will look into the plaint to satisfy itself as to what was the question that was really at issue between the parties. The plaints are not forthcoming; and further, even assuming that in the decision of the Small Cause Court incidentally some reference was made to the question of title, I do not think that such a decision can constitute res judicata. I do not propose to go through all the decisions that were referred to me on this point but I would content myself with making a reference to the *Puttangowda v. Nilkath Kalo Deshpande* (1913) 37 Bom. 675 I think, therefore, that the decision has been materially irregular and I should set it aside and restore the decision of the first Court and dismiss the suit of the plaintiff for the jodi claimed for the suit faslis.

3. It was pressed upon me by the learned Counsel for the respondent that ordinarily the High Court does not interfere in matters coming u/s 115, CPC and that here the utmost that could be said is that there was erroneous decision of law. I am inclined to look at the decision from another standpoint. Both Courts on the facts have found that the tenant is not bound to pay the jodi: it was irregular for the Appellate Court, of its own accord, to raise the question of res judicata and, basing it on the flimsy materials which it had before it. to reverse the decision of the first Court. I allow the Civil Revision Petition with costs here. The Second Appeal is dismissed with costs.