

(1897) 01 MAD CK 0002
In the Madras High Court

Nathuram Siviji Sett

APPELLANT

Vs

Kutti Haji

RESPONDENT

Date of Decision : 26-01-1897

Acts Referred:

Citation : (1897) ILR (Mad) 446

Hon'ble Judges : Davies, J;Boddam, J

Bench : Division Bench

Judgement

1. The Judge is in error in stating that the defendant was sued only as legal representative of the deceased. He was in fact sued as the heir and possessor of the assets of the deceased. It having been proved in the suit that the defendant had received sufficient assets to meet the plaint debt, the Court of First Instance was justified in passing a personal decree against him in the suit for that debt, and it was not necessary to wait for execution proceedings to determine the extent of the defendant's personal liability as contemplated in Section 252 of the Code of Civil Procedure.

The ease of Magaluri Garudiah v. Narayana Rungiah ILR 3 Mad. 359 is in point rather than the case of Janaki v. Dhanu Lall ILR 14 Mad. 454 quoted by the Judge. We must, therefore, reverse the decree of the lower Appellate Court and restore that of the District Munsif. The defendant (respondent) must pay the plaintiff's costs in this and the lower Appellate Court. This disposes of the memorandum of objections which is simply dismissed.