

(1898) 09 MAD CK 0003
In the Madras High Court

Odayna Tevar

APPELLANT

Vs

Thandavaraya Thambiran

RESPONDENT

Date of Decision : 01-09-1898

Acts Referred:

Citation : (1898) 8 MLJ 301

Judgement

1. We are clearly of opinion that the lower Court was right in holding that a decree could not be passed in the terms of the compromise, inasmuch

as the compromise did not give to the plaintiff any of the reliefs claimed in the suit, but dealt with various matters, not the subject-matter of the suit.

2. It is, however, contended for the respondent that the Subordinate Judge was right in dismissing the suit as a necessary result of the compromise

between the parties. But this contention assumes that the compromise was an absolute one, independent of the question whether the Court could

pass a decree in its terms. We do not think it at all clear that such was the intention of the parties. The request that a decree should be passed in

the terms of the compromise is contained in the document of compromise itself and would, therefore, appear to be one of its terms. If so, it would

be a condition precedent to the compromise being effected that it should be included in the decree. The intention of the parties on this point, as we

have observed, is not clear and we think that the Sub-ordinate Judge before dismissing the suit should have informed the parties that the terms of

the compromise could not be embodied in a decree and should have ascertained from them or upon further evidence, if necessary, whether the

compromise was absolute or conditional on its being incorporated in a decree. In the latter case, he would, of course, have proceeded with the

suit. We shall, therefore, reverse his decree and direct him to dispose of the suit afresh in accordance with the above observations.

3. Costs already incurred in both Courts will be provided for in the revised decree.