

(1934) 08 MAD CK 0032
In the Madras High Court

P. Guruswami Naick

APPELLANT

Vs

Venkidammal and Others

RESPONDENT

Date of Decision : 20-08-1934

Acts Referred:

Citation : AIR 1934 Mad 699(1) : 153 Ind. Cas. 451 : (1935) 41 LW 580 :
(1935) 68 MLJ 405

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—The petitioner instituted a suit on the small cause side for contribution to the extent of Rs. 200 against the legal

representatives of one Naranappa who died about six years prior to suit in respect of the amount paid by the petitioner in satisfaction of a joint

decree against himself and Naranappa. That decree had been passed against them as joint managers of a chit fund. The District Munsif was of

opinion that the suit was not of a small cause nature and ordered the plaint to be returned for presentation to the proper Court. The real contest

between the parties, and this was the point actually decided by the District Munsif, was whether a suit for contribution was maintainable at all in

view of the fact that the decree in question was a liability of the partnerships composed of the petitioner and the late Naranappa, and not whether if

such a suit was maintainable it was of a small cause nature. The District Munsif accepted the contention of the contesting defendants 2 to 4 that

only a suit for accounts of the partnership lay in the circumstances and not a suit for contribution. It was not the case of the contesting defendants

that the partnership was subsisting; on the other hand, it was allged in the plaint that one of the two partners Naranappa, died six years ago, and

this allegation was not denied. The point is one already decided in Venkataratnam v. Venkataratnam (1912) 15 I.C. 218 and I see no reason why the decision in that case should not be followed. I find therefore that the suit is maintainable on the small cause side; it will be open to the contesting defendants however to prove that on a settlement of accounts the amount payable by them is wiped out or reduced.

2. The order of the District Munsif ordering the plaint to be returned is hereby set aside and the District Munsif is directed to restore the suit to its

original number on his file and dispose of it according to law. The petitioner is entitled to have his costs of this petition from respondents 2 to 4.