

(1891) 03 MAD CK 0005
In the Madras High Court

Peramanayagam Pillai

APPELLANT

Vs

Arunachella Row and Others

RESPONDENT

Date of Decision : 17-03-1891

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 102

Citation : (1896) 6 MLJ 401

Judgement

1. The plaintiff sued for Rs. 2,352-15-9 being the balance due on two hypothecation bonds. The defendants answered that nothing was due on the first bond ; that Rs. 1,000 of the consideration for the second bond had not been received and hence that that sum and its interest Rs. 722-8-0, should be deducted from the amount due on the second bond, that a sum of Rs. 13-13-0 was wrongly claimed and that the payments had not" been properly. credited, and finally that only Rs. 587-13-7 remained due. The case was posted for final hearing on September 14, 1888 On that the plaintiff's Vakil (or one of them) got leave till 3 P.M. At some hour later than 3 PM., the District Munsif called the suit when plaintiff and his Pleader were not present, though defendant 's Vakil and their witnesses were present. The District Munsif then passed "the order "" case closed, but did not give judgment. A petition was filed by plaintiff on the 20th and dismissed on the 22nd and the District Munsif gave judgment on September 24th u/s 102 of the Code of Civil Procedure, [387] dismissing plaintiff's claim except as to Rs. 587-13-7 which was admitted to be due.

2. An appeal was then preferred to the District Court which has been dismissed by the Judge u/s 551 of the Code of Civil Procedure. No notice

was given to the respondents, but the Judge called no less than four times for explanation from the District Munsif as to the hour at which the suit had been dismissed. The explanation was ambiguous and unsatisfactory and it is not borne out by the B. dairy, which has been filed before us, but which was not apparently before the District Judge in consequence of his omission to call for the records. Finally on 26th March 1889, the Judge dismissed the appeal, holding a dismissal u/s 102 of the CPC was not rendered invalid, because judgment was not delivered till six days afterwards.

3. It was first objected that there was no second appeal--but this is not the case, *Ablakh v. Bhagirath* (1887) L.R. 9 IA. 427 and the facts that the

District Judge failed to notice that the onus probandi on the first issue lay on defendants and "that the documents themselves admitted are sufficient grounds for the entertainment of a second appeal..

4. In our opinion there seem ample grounds why notice should be issued to the respondents and the appeal be investigated by the Judge. The

District Munsif, on September 19th, must have acted u/s 157 of the CPC and the order which he passed was ?"" ease closed."" What precise legal

signification he attached to this order does not appear, but at any rate the plaintiff had appeared and was anxious to be heard before the 24th,

which was the day on which the suit was disposed of u/s 102, on which date the judgment was given ignoring the materials on the record and the

onus probandi.

5. We regret that we have often had to notice that decisions given at the close of a quarter appear to be given without sufficient investigation of the facts.

6. The second appeal must be allowed and the appeal remanded for decision after notice to the respondents.

7. Appellant is entitled to his costs in this second appeal and the costs in the Lower Appellate Court will abide and follow the result.