
(1948) 08 MAD CK 0053
In the Madras High Court

Ponnambalam Pillai

APPELLANT

Vs

Panjaksharam Pillai and Others

RESPONDENT

Date of Decision : 06-08-1948

Acts Referred:

Citation : (1948) 61 LW 855 : (1948) 2 MLJ 600

Hon'ble Judges : Govinda Menon, J

Bench : Division Bench

Judgement

Govinda Menon, J.

1 The view of the lower Court that the petitioner could take advantage of the 1 1/4 cawnies admitted to belong to him according to the compromise decree, which he now wants to set aside and claim more, overlooks the provisions of explanation (1)(b) to Order 33, Rule 1 of the Code of Civil Procedure. The subject-matter of the suit is the compromise decree one and entire. What the petitioner seeks to set aside is that decree and the same cannot be cut up into various divisible parts. Explanation (11) makes the position clear. If the respondents had placed 1 1/4 cawnies at the immediate disposal of the plaintiff then probably they could have contested that the plaintiff was possessed of means. On the other hand their counter-affidavit in lower Court stated that even in the 1 1/4 cawnies the plaintiff is now entitled to a vested right after the death of the respondents.

2. As observed by Madhavan Nair, J., in Ramaswami Naidu v. Vaiyapuri Nadar (1934) 67 M.L.J. 581 in a suit where the plaintiff got a decree for partition of certain properties saddled with debts, it cannot be said for the purpose of opposing an appeal in forma pauperis by the plaintiff against the liability for debts that the subject-matter of the appeal is not the entire decree.

3. I would therefore hold that the lower Court failed to exercise the jurisdiction vested on it by law in not allowing the application to sue as a pauper. The order of the lower Court is set aside and the revision allowed with costs in this Court.