

(1914) 11 MAD CK 0018
In the Madras High Court

Ponnusawmy Mudaliar

APPELLANT

Vs

Muthusawmy Mudaliar

RESPONDENT

Date of Decision : 02-11-1914

Acts Referred:

Citation : 29 Ind. Cas. 585

Hon'ble Judges : Tyabji, J;Oldfield, J

Bench : Division Bench

Judgement

1. The District Munsif dismissed the suit, applying the decision in Venkutasami v. Kristayya 16 Ma. 341 : 3 M.L.J. 169 and assuming that the document was not registered through the defendant's default. The learned Subordinate Judge rightly distinguished that case on the ground that the document in the present case was in the possession of mediators, not of the plaintiff. But he also then made an assumption, that the plaintiff was not in default in respect of the failure to register it. There is no finding of either Court as to the conditions on which the mediators had the document or on whose behalf they held it or whether the plaintiff could have got it from them and presented it for compulsory registration. He would be entitled to relief only if, in the words used in Subba Reddiar v. Visvanatha Reddiar 22 Ind. Cas. 941 the nonregistration was not due to any default on his part. Vide also Nynakka Routhen v. Varama Mahomed Naina Routhen 5 M.H.C.R. 123 and Chinna Krishna Reddi v. Dorasami Reddi 20 M. 19.

2. We, therefore set aside the decrees of the lower Courts and direct the District Munsif to restore the suit to file and dispose of it according to law in the light of the foregoing. Costs to date in all the Courts will be costs in the case.