
(1920) 08 MAD CK 0004
In the Madras High Court

Pujari Lakshmana Goundan and Another APPELLANT
Vs
K. Subramania Aiyar and Others RESPONDENT

Date of Decision : 31-08-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144

Citation : AIR 1921 Mad 103 : 61 Ind. Cas. 962 : (1921) 13 LW 67

Hon'ble Judges : Oldfield, J;Abdur Rahim, J

Bench : Division Bench

Judgement

Abdur Rahim, J.—In this case a decree was passed in a suit u/s 92, Civil Procedure code, dismissing the suit by the Temporary Sub-Court

of Salem. Then there was an appeal to the High Court from the decree. A Division Bench of this Court confirmed the decree of the Subordinate

Judge u/s 98, Civil Procedure Code. On further appeal from the said decree of the High Court, the original decree of the Temporary Sub Court

was set aside and a direction was given that the lower Court was to restore the suit and proceed with it according to law. The Temporary Sub-

Court which had passed the original decree ceased to exist on 31st December 1916, and another Temporary Sub-Court was established on 14th

February 1919; It was to that Court that the order of the High Court was directed, Then an application was made to it by the defendants in the

suit, the appellants before us who had originally unseeded, for payment of costs, and they realized their costs from the plaintiffs. The original decree

was set aside by the High Court, and the plaintiffs then applied to the second Temporary Sub Court, to which the suit was remanded for re-

hearing, for restitution and succeeded in the application. It is contended before us by the learned Vail for the defendants that this second

Temporary Sub-Court had no jurisdiction to entertain the application for restitution. His contention is that u/s 144, Civil Procedure Code, the Court of first instance means the Court which passed the original decree and as that Court has ceased to exist, the present Temporary Sub-Court which has been substituted in its place is not the Court of first instance within the meaning of the law. We are unable to accept this argument. The Court of first instance in Section 144 is used, in contradistinction to a Court of Appeal. Here the Court that passed the original decree has ceased to exist and the High Court has remanded the suit to the present Temporary Sub-Court. Under these circumstances, the Sub-Court must be treated as a Court of first instance within the meaning of Section 144.

2. Then reliance was placed on Section 37, Civil Procedure Code, but even that does not help the appellant. Clause (6) says that where the Court of first instance has ceased to exist or to have jurisdiction to execute the decree, then the application in execution is to be made to the Court which has jurisdiction to try such a suit. Here undoubtedly the present Temporary Sub Court of Salem has jurisdiction to try the suit, at least by virtue of the order of this Court. We must, however, not be taken to lay down that Section 37, Civil Procedure Code, which refers to applications for execution of decrees, applies to applications for restitution, and it is unnecessary for us to decide the point. But, assuming that the Section applied to this case, even then the appellants contention is not sustainable. The appeal is dismissed with costs,

3. The Subordinate Judge was wrong in not awarding interest on the amount recoverable by the plaintiffs in the suit, and the reason given by him are all erroneous. He says the decrees and orders directing payment of costs to plaintiffs did not provide for interest thereon, that the High Court has ordered that the costs of both sides have to be met by the temple funds and, thirdly, it is not shown that the plaintiffs had to borrow money in order to pay the defendants." None of these reasons have any relevancy at all. The defendants must be treated as having the money of the plaintiffs in their hands received by them under a wrong order of the Court. There is no reason whatever why the plaintiffs should be deprived of interest which their money could have earned. We allow the plaintiffs six percent, the usual rate of interest. The costs of the memorandum of objections will

be paid by the appellants.

Oldfield, J.

4. I only wish to observe that, for the present purposes, the expression Court of first instance coursing in Section 144 can have only one meaning, whatever meaning might be given to it with reference to the definition earlier in the Code of Court which passed the decree. Here the Court of first instance, which passed the decree, was a different Court from that in which the proceedings are now pending. The only material question with reference to this case is, which is the Court of first instance at present, and the Court of first instance, in the ordinary meaning of the expression, can only be the Court where the trial is at present pending. It seems to me that that is a sufficient reason for disallowing the appellants contention. I agree with my learned brother in the order proposed by him.