

(1916) 01 MAD CK 0011
In the Madras High Court

Ramu Shettithi and Others

APPELLANT

Vs

Maniappu Shettithi and Others
Hoovayya Shettithi Vs
Ramu Shettithi and Others

RESPONDENT

Date of Decision : 06-01-1916

Acts Referred:

Citation : 33 Ind. Cas. 520

Hon'ble Judges : Sadasiva Aiyar, J; Moore, J

Bench : Division Bench

Judgement

1. The Subordinate Judge is right as regards the disallowance of the relief claimed against the person of the 24th defendant.

2. As regards the disallowance of item 6 of the Samanebetta lands, the District Munsif was right in his view that his predecessor, who decided the

suit itself originally, could not have intended to reserve for execution proceedings the substantial question of mixed law and fact whether a land

which belonged to the Samanebetta house had, by adverse possession, ceased to be owned by the plaintiffs. All that was intended to be left for

execution proceedings was the question of the ascertainment of those lands through measurement and boundaries and the quantity of mesne profits

on such lands.

3. The Subordinate Judge was also in error in not accepting the District Munsif's finding as to the mesne profits, as we find nothing illegal in the

mode of calculation adopted by the District Munsif.

4. This appeal (Appeal against Appellate Order No. 6 of 1914) is allowed on the latter two of the three questions considered above and dismissed

as regards the first of those questions.

5. Coming to the cross-appeal (Appeal against Appellate Order No. 14 of 1914) we think that the Circar assessment paid by the defendants

ought to have been credited in their favour in the ascertainment of mesne profits due to the plaintiffs. See *Kachar Ala Chela v. Sha Oghadbhai*

Thakarshi 17 B.K 35. The interest allowed on mesne profits is also excessive and is reduced to six per cent per annum.

6. As regards damages for the defendants' alleged negligence in having allowed the decreed house to be burnt down, that is not a matter to be

dealt with in execution of the decree, See *Becharam Paul v. Bhugwan Chander Ghose* 5 C.L.R. 522.

7. The appeal (Appeal against Appellate Order No. 14 of 1914) is allowed in the above particulars and disallowed otherwise.

8. The parties will bear their respective costs in this Court in both the appeals.