
(1917) 03 MAD CK 0011
In the Madras High Court

R.S. Rama Shenoi and Another

APPELLANT

Vs

M.A. Hallagna and Another

RESPONDENT

Date of Decision : 20-03-1917

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 44

Citation : AIR 1918 Mad 274 : (1918) ILR (Mad) 205 : 45 Ind. Cas. 703 :
(1918) 34 MLJ 295

Judgement

1. A decree was obtained against the elder brother of the plaintiff in the Cochin Court. In the cause title, he was described as the manager of the joint family. Apparently the plaintiff alleged that the family property was liable for the claim as the debt was contracted for family purposes. The defendant in the Cochin Court pleaded that no decree should be passed against him as manager. Therefore issue 7 was framed. The Cochin Judge held that the burden of proving that the defendant was not the manager and that the debt was not binding on the family lay upon him, and passed a decree against him personally and against the family properties. The decree was executed against the Cochin properties and then transferred to the British Court u/s 44 of the Code of Civil Procedure. In our Court, a claim was preferred by the plaintiff against the attached properties on two grounds:--(a) that the defendant in the Cochin suit had become divided from the plaintiff before suit and (b) that the decree was otherwise not executable against the properties in the possession of the plaintiff. The claim was rejected. The plaintiff has brought this suit to establish his right.

The Courts below have dismissed the suit. Hence this second appeal.

2. Dr. Pandalai for one of the brothers, the appellant in Second Appeal No. 2181 of 1915, contended that it was the duty of the Courts below to

have decided whether there was a division prior to the Cochin suit and whether the brother who was sued in that Court was the manager. It is

clear under Rule 63. Order 21 that the burden of proof is on the plaintiff to establish his claim. Beyond stating that he was divided, he has asked

for no issue; and has adduced no evidence on the question of division or managership; the plaintiff is not therefore entitled to ask us to send the

case down for a finding on that question.

3. The learned Counsel further contended that, as the Cochin Court was wrong on the question of the burden of proof, the judgment must be

deemed not to have been given on the merits. We are unable to accept this contention. In the Cochin Court, the general law administered relates to

Marumakkathayam Tarwads; and as in a suit against the Karnavan as such the decree would be binding on the Anandravans, unless the latter

could show that the Karnavan was not acting on behalf of the Tarwad, the idea seems to have gained ground that in the case of suits against

managers of Marumakkathayam families the onus is on the other members to show that the debt is not binding on them. This is not the law as it

obtains in British India. It is for the creditor to prove that the debt is recoverable against the members of the family; we may, therefore, take it ""that

the Cochin Court was not right in its view of Hindu Law. Does that render the judgment one not given on the merits ? We have not before us all

the materials on which the Cochin judgment was based. Consequently, we are unable to hold that the decision was not on the merits, The decision

of the Judicial Committee in Keymer v. Visvanadha Reddy 32 M.L.J. 35 has no bearing on the present case. There is no warrant for the

proposition that a wrong view as to onus would have the effect of rendering a foreign judgment one not given on the merits.

4. Mr. Ananthakrishna Aiyar who appeared for another brother the appellant in the connected appeal raised a more serious contention: He argued

that as the Cochin Court was manifestly wrong on a point of Hindu Law, the judgment was contrary to natural justice. In this connection, we notice

that the language of Clause (d) of Section 13 has undergone change. In the old Code, the words were ""if it is in the opinion of the Court before

which it is produced contrary to natural justice"". The present language in Section 13 (d) is ""where the proceedings in which the judgment was

obtained are opposed to natural justice." This change carries out the view of Bramwell, B in *Crawley v. Isaacs* (1867) 16 L.T.529. The learned

Baron there said: " I think the term "natural justice" which has been used in reference to foreign judgments refers rather to the form of procedure

than to the merits of the particular case." (Page 531). Consequently the mere fact that a judgment is wrong in law is not enough. There must be

something in the procedure anterior to the judgment which is repugnant to natural justice. That cannot be said of the present case. Further as

pointed out by Lord Chelmsford in *Liverpool Marine Credit Co. v. Hunter* (1868) L.R. 3 Ch. A 479, a mere incorrect view of law by a foreign

Court would not give jurisdiction to our Courts to say that the judgment is opposed to natural justice. See also per Cockburn, C.J., in *Imrie v.*

Castrique (1860) 8 C.B. 405 and *Scott v. Pilkington* (1862) 2 B. & S. 11. Mr. Ananthakrishna Aiyar drew our attention to *Messina v.*

Petrocochino (1872) L.R. 4 P C 144. In that case it was pointed out that unless there was a manifest error or fraud in the proceedings of the

judgment, the British Court should give effect to it. A wrong view as to onus does not render a judgment erroneous on the face of it. Moreover

having regard to *Liverpool Marine, Credit Co. v. Hunter* (1868) L.R. 3 Ch. A. 479, we are unable to hold that a mistake as to law which is all that

can be alleged against the decision in the present case, would be sufficient to vacate a foreign judgment. For these reasons, we think the decision of

the Courts below is right and we dismiss the second appeal with costs. The Letters Patent Appeal follows.