

(1900) 11 MAD CK 0018
In the Madras High Court

Sabhapathi Gurukkal

APPELLANT

Vs

Lakshmu Ammal and Others

RESPONDENT

Date of Decision : 08-11-1900

Acts Referred:

Citation : (1901) ILR (Mad) 293

Hon'ble Judges : Subrahmania Ayyar, J; Davies, J

Bench : Division Bench

Judgement

1. In the case of Vythelinga Mudelly v. Cundaswamy Mudely 8 M.H.C.R. 21 cited for the appellants, the order by which leave to sue was refused

remained in force when a subsequent application was presented praying for the grant of leave to institute a suit substantially the same as that for the

institution of which leave had been refused. The order granting leave passed on such an application by a Judge other than the Judge who had

refused the leave was held to be irregular, as it amounted to a review by the former Judge of the decision of the latter under circumstances which

did not permit of the review. The present case is clearly distinguishable. For, in pursuance of Mr. Justice Boddam's order granting leave, a suit was

brought, though it was subsequently withdrawn with permission to sue again in respect of the same matter. The force of the order granting leave

was exhausted by the institution of the suit in pursuance of the order. Consequently when the appellants applied for leave to institute a fresh suit

regarding the same subject-matter, there was nothing to prevent Mr. Justice Shephard from dealing with the application and granting or refusing

leave as he deemed proper.

2. The order which was passed by the learned Judge in the due exercise of his

discretion and which refused leave must be upheld and the appeal dismissed with costs.