

(1911) 11 MAD CK 0078
In the Madras High Court

Sahib Thambi Marakayar

APPELLANT

Vs

Hamed Marakayar and Others

RESPONDENT

Date of Decision : 10-11-1911

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : (1913) ILR (Mad) 414 : (1912) 22 MLJ 109

Judgement

1. The plaintiff obtained a decree in Suit No. 107 of 1904 on the file of the Supreme Court of Singapore against M.L.V. Sahib Malim and Co. for money due to him from the defendants in that suit. The plaintiff alleges that one L.V. Markayar (the father of the first defendant and the husband of the second defendant in the present suit) the third defendant, and the fourth defendant in the present suit were the persons constituting the partnership of M.L.V. Sahib Malim and Co.; that the third defendant defended the suit on behalf of the firm and that a decree was passed by the Supreme Court of Singapore against the firm. The present suit is based on the judgment of the Singapore Court and is for the recovery of the amount due under that judgment. The plaintiff alleges that L.V. Marakayar and the fourth defendant were aware of the proceedings in the Singapore Court and that the suit was defended by the third defendant with their consent. The plaintiff's case is that the judgment of the Singapore Court is binding on the first and second defendants as representatives of L.V. Marakayar and on the fourth defendant though it is admitted that notice of the suit was not served on L.V. Marakayar or the fourth defendant. The relief asked for is against the first and second defendants as representatives of L.V. Marakayar and against the third and fourth defendants personally and not against any property in their hands belonging to the partnership firm of M.L.V. Sahib Malim and Co. In fact it is not alleged that there are any partnership assets in their possession. Defendants Nos. 1, 2 and 4 denied that they were partners of the third defendant but the lower courts have found that they were, and that finding has not been attacked before us. The lower courts have dismissed the suit, upholding the defendant's contention that the Supreme Court of Singapore had no

jurisdiction to pass a decree against L.V. Marakayar and the fourth defendant as they were not residing there either permanently or at the time of the suit and owed no allegiance to the Government of the Straits Settlements. The plaintiff's contention that the fourth defendant was at Singapore at the time of the institution of the suit has been negated by the lower courts and we accept that finding. The plaintiff, who has appealed against the dismissal of the suit, contends that as L.V. Marakayar and the fourth defendant have been partners of the third defendant at the time of the suit at Singapore and as the suit related to money due on partnership dealings the judgment of the Supreme Court is binding on all the defendants. We consider it unnecessary to decide the question whether the judgment could be held to bind the first, second and fourth defendants to any extent, for we are clearly of opinion that we must uphold the contention of Mr. S. Srinivasa Iyengar, the learned Vakil for the respondents, that the judgment, could only bind them in any event with respect to partnership property in their hands, and it is not alleged, as already observed, that they are in possession of any such property. The general rule of law undoubtedly is that in suits where one person is allowed to represent others as defendant in a representative capacity any decree passed can bind those others only with respect to the property of those others which he can in law represent, and no personal decree can be passed against them, although the parties on record *co nomine* may be made personally liable. This is the principle applied in suits against a Hindu family as represented by its managing member and in suits to which Order I, Rule 8, of the CPC is applicable. It has consequently been held that an injunction in a decree in the latter class of cases is not binding on those who are not actually parties to the record. See *Sadagopachari v. Krishnamachari* ILR (1889) M. 356, *Srinivasa Iyengar v. Arayar Srinivasa Iyengar* ILR (1910) M. 483.

2. The principle is recognised in England in partnership suits in Order 48 A, Rule 8, Judicature Act, which lays down that, where judgment or order is against a firm, execution may issue only against any property of the partnership so far as partners who are not individually served and those who have not appeared are concerned. In the CPC of 1908 provision has been made in this country for suing a partnership by its firm name in Order 30. Order 21, Rule 50, corresponds to Rule 8 of Order 48 A in the English Judicature Act. The judgment of the Supreme Court was against the firm and no decree was passed against L. V. Marakayar or the fourth defendant individually. There is no reason for construing it as creating a larger liability against them than to make the partnership property in their hands liable. It is unnecessary to consider whether if it purported to do so, effect would be given to such a decree in British India according to the principles of Private International law.

3. The Subordinate Judge apparently finds that L.V. Markayar and the fourth defendant assisted the third defendant in defending the Singapore suit and the District Judge seems to adopt that finding. Mr. Srinivasa Iyengar impugns that finding, but it is unnecessary to examine its correctness as it cannot carry the

appellant's case further, for the conduct of L.V. Marakayar and the fourth defendant would not amount to more than an attempt to escape the liability that a decree against the third defendant as representing the firm would cast on them, Mr. Anantakrishna Aiyar, for the appellant, relies also on the fact that the third defendant made a counter-claim in the suit, but this again can be referred only to his representative capacity. We must hold that the plaintiff is not entitled to the decree he asks for against the first, second and fourth defendants. We dismiss the second appeal with costs.