

(1927) 03 MAD CK 0063
In the Madras High Court

Salai Muhammad Haji Ibrahim and Co.	Vs	APPELLANT
Ayya Nadar and Others		RESPONDENT

Date of Decision : 25-03-1927

Acts Referred:

Citation : AIR 1927 Mad 944

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—The respondent takes a preliminary objection and contends that no revision petition lies in this case. He relies on Shankar

Sarup v. Mejo Mal [1901] 23 All. 313.

The scheme of Section 295, Civil P. C., is rather to enable the Judge, as a matter of administration to distribute the price &c.

2. On this sentence I do not understand the Judicial Committee to say that the act of a Court in passing an order u/s 295, Civil P. C., 1882, (Civil

P. C., 1908, Section 73), is a ministerial or non-judicial act. The reasoning underlying the contention is that the work of administration of assets is

administrative. I think there is a fallacy in passing from the noun to the adjective in this manner. On this reasoning, all the orders of Courts under the

Succession Act and the Probate and Administration Act and Hindu Wills Act, relating to the administration of the assets of deceased persons are

administrative and not judicial which is absurd. The learned vakil for the respondent refers me to the decision in Sarvana Pillai v. Arunachalam,

Chettiar [1917] 40 Mad. 841 It is true that Seshagiri Iyer, J., cites the decree of the Privy Council and says:

Such a Court is acting ministerially.

3. I respectfully dissent from this sentence. If Seshagiri Iyer, J., has applied his reasoning and held that the civil revision petition before him did not

lie, I would have referred this matter to a Bench of two Judges. But he did nothing of the sort. He used the sentence I already referred to only for

holding that, in the case of proceedings u/s 295, a Court cannot enquire into the validity of the decrees sought to be executed. In this I agree, and I

do not think it is necessary for this purpose to hold that orders u/s 295 are merely ministerial. On the other hand civil revision petitions have always

been allowed against orders u/s 295, though of course, Courts will be very slow to interfere seeing that there is another remedy. The Courts will

only interfere if there is any obvious mistake and the result of the regular suit is certain: vide *Sree Krishna Doss v. Chandook Chand* [1909] 32

Mad. 334 I disallow the preliminary objection: see also *Subramanian Chetty v. Ramaswami Chetti* A. I. R. 1926 Mad. 179 and *Karpaga Nidhi*

Ltd. v. Vania Vilas Nidhi Ltd. A. I. R. 1925 Mad. 587.

4. On the merits, I do not think this is a proper case for my interference. This petition is dismissed with costs.