

(1914) 07 MAD CK 0052
In the Madras High Court

Samu alias Anantajstabayana Pattar

APPELLANT

Vs

Swaminatha Iyer and Others

RESPONDENT

Date of Decision : 31-07-1914

Acts Referred:

Citation : AIR 1915 Mad 330(1) : 25 Ind. Cas. 221 : (1914) 1 LW 643

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

Bench : Division Bench

Judgement

1. A father fully represents the whole family consisting of himself and his undivided sons, in a litigation which he conducts in the interests of the family. Unless the decree in such a litigation was passed owing to the fraud or collusion on his part directed against his sons that decree and the findings in that suit in which that decree was passed are binding on the sons.

2. An agreement by the father in the previous litigation to be bound by an oath taken under the Oaths Act cannot, by the mere fact that it is based on the special provisions of the Oaths Act, be said to be an agreement made to defraud the sons. Of course, a tort committed by the father is not necessarily one committed on behalf of his sons also and is not binding on the sons, and that is the ground of the decision in Appa Row v. Sankara Venkatadri 17 M.L.J. 197 : 2 M.L.T. 86 quoted by the appellants' learned Vakil.

3. The judgment in Keshava v. Budram 3 M. 259 which held that the decision of an issue of fact based on an oath taken under the Oaths Act is not res judicata between the same parties in a subsequent litigation Relating to another property is no longer sound law. See Sanyasi Baritya v. Artaswaro 18 Ind. Cas. 835 : 86 M. 287 : 24 M.L.J. 321 : 13 M.L.T. 261 : (1918) M.W.N. 220.

4. The decision in Tkimmappaya v. Lakshminarayana 6 M. 284 was based on the view then prevailing that a Hindu father, unless he expressly professed to act in the representative capacity of the head of his family in a litigation, must be treated as having acted solely in his personal or individual capacity. That case is,

again, no longer good law. See *Jijamba Rai Sahib v. Saginram Jathai Rao Sahib* 14 Ind. Cas. 374 : 22 M.L.J. 45.

5. We dismiss the second appeal with costs.