

**(1907) 11 MAD CK 0008**  
**In the Madras High Court**

Saravana Pillai and Others

APPELLANT

Vs

T. Sessa Reddi

RESPONDENT

---

**Date of Decision :** 29-11-1907

**Acts Referred:**

**Citation :** (1908) ILR (Mad) 469 : (1908) 18 MLJ 34

---

**Judgement**

1. We are unable to agree with the judgment in Kristna Reddi v. Srinivasa Reddi M.H.C.R. 174 if it is to be regarded, as would seem to have

been the view of the learned judges by whom the present order of reference was made, as a decision to the effect that, when there has been a

failure by the lower appellate Court to comply with the requirements of Section 574 of the Code of Civil Procedure, the only course open to this

Court in second appeal is to send back the case to the judge who heard the appeal, and that, when this is impracticable, no further action can be

taken.

2. We are of opinion that the proper form of order is that which, in recent years, has, we believe, been almost invariably adopted by this Court,

namely, an order setting aside the decree and remanding the case to the lower appellate Court to be disposed of according to law - see, for

instance, the orders in Kunhi Marakkar Haji v. Kutti Umma ILR (1897) M. 496 and Sitarama Sastrulu v. Suryanarayana Sastrulu ILR (1898) M.

12. This would seem to be in accordance with the present practice of the Calcutta and Bombay High Courts - see Rami Deka v. Brojo Nath

Saikia ILR (1897) C. 97 Bhagavan v. Kesur Kuverji ILR (1892) m. 428 and Ramchandra Govind Manik v. Seno Sadashiv Sarkhot ILR (1894)

C 551 - although, in the last mentioned case, there was no formal order setting

aside the decree.

3. If the judge of the Court to which the case is remanded, is the judge who heard the appeal in the first instance, and if he considers that he can properly dispose of the remanded case without a rehearing of the appeal, the writing of a judgment which satisfies the requirements of Section 574, without rehearing the appeal, would, in our opinion, be a compliance with the order that the case be disposed of according to law. But, in all cases where the judge of the Court to which the case is remanded, is not the judge who heard the appeal in the first instance, and in all cases where the judge of the Court is the judge who heard the appeal in the first instance, but he does not consider that he can properly dispose of the remanded case without a rehearing of the appeal, a rehearing is necessary in order that there may be a compliant with the order of this Court that the case be disposed of according to law.