
(1925) 04 MAD CK 0008
In the Madras High Court

Sekkhu Musthabu alias Appu Ravuthan APPELLANT
Vs
Nani and Others RESPONDENT

Date of Decision : 29-04-1925

Acts Referred:

Civil Procedure Code, 1882 — Section 234, 244

Citation : 92 Ind. Cas. 377

Hon'ble Judges : Phillips, J

Bench : Single Bench

Judgement

Phillips, J.—The first objection taken by the appellant is that the application to execute the decree on behalf of the legal representatives of

the decree-holder ought not to have been made to the Court which was executing the decree but to the Court which passed the decree. This

question is concluded by a decision of the Full Bench in this Court in Swaminatha Ayyar v. Vaidyanatha Sastri 15 M.L.J. 116 and also in 4mar

Chundra Banerjee v. Guru Prosunno Mukerjee 14 Ind. Dec. 321 and Tameshar Prasad v. Thakur Prasad A.W.N. (1901) 99 Sham Lal Pali v.

Modhu Sudan Sircar 11 Ind. Dec. 372. All these cases were decided under C.P.C. of 1882 and there has since been an alteration in Sections 88,

244, 232 and 234 of that Code. It is questionable whether these decisions are correct under the new C.P.C. and I may observe that in the Full

Bench decision in Madras, the learned Chief Justice did not come to a determination without considerable hesitation and one of the Judges was of

opinion that Sections 234 and 244 of the Code of 1882 are irreconcilable. As these sections have now been amended, it is possible that they may

be reconciled by a different interpretation of them. I, however, refrain from discussing this question further in view of the fact that the appeal must

fail on another ground.

2. The appellant was a party to the order in execution proceedings in which the legal representatives were added and although he preferred an

appeal against the order, he did not take this particular ground of appeal and the order was confirmed. u/s 11, Expl. 4 the ground ought to have

been decided. It is, therefore, not open to him now to raise the same objection in a suit. It is contended that he can do so, because the Executing

Court had no jurisdiction to decide the case. It has been held that the Court had no jurisdiction, but it is not a question of absolute jurisdiction, but

a question of exercising jurisdiction wrongly, and it has been held that a similar order passed in these circumstances is subject to appeal and is not

necessarily null and void from its inception. 1 may refer in this connectipn to Hadjee Ahdoollah Reasut Hossein v. Hadjee Abdoollah 3 I.A. 221 : 1

Ind. Dec. 380 (P.C.). The order not being null and void from its inception, this plea that it was absolutely without jurisdiction cannot avail the

appellant. This suit was rightly dismissed and the second appeal must also be dismissed with costs.