
(1912) 02 MAD CK 0055
In the Madras High Court

Seshagiri Row

APPELLANT

Vs

Vajra Velayudam Pillai

RESPONDENT

Date of Decision : 28-02-1912

Acts Referred:

Citation : (1913) ILR (Mad) 482

Hon'ble Judges : Sundara Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1.The facts of this case are quite similar to those in Mira Mohidin Rowthen and Another Vs. Nallaperumal Pillai and Another, , and according to the decision in that case the suit is clearly barred; but it is contended that an argument of importance was not submitted to the court in that case, which would have materially influenced the judgment. That argument is that when a plaint returned for presentation to the proper court on the ground of absence of jurisdiction in the court to which it was originally presented is represented to the proper court, the suit itself must be regarded as a continuation of the infructuous suit in the wrong Court. This argument cannot be upheld. Proceedings instituted without jurisdiction cannot be deemed to be legally. valid so as to be capable of being continued in another court. In the case in Takuroodeen Mahomed Eshan Chowdry v. Kurimbux Chowdry (1865) 3 W.B. 20 cited for the appellant the suit was regarded as transferred from one court to another. In such a case of course it is the same suit that is continued in the court to which the transfer is made. The case in Khelat Chunder Ghose v. Nuseebunnissa Bibee (1871) 16 W.R. 47 is not in point as there the question was not one of limitation though, in one portion of the judgment the learned Judges who decided the case speak of the suit being the same where a plaint returned by one court; is represented to another court. In Assan v. Pathumma (1889) 22 Mad. 494, this Court held that the original plaint must be taken to have been merely amended and the case is therefore not similar to this case. Abhoya Churn Chukerbutty v. Gour Mohun Dutt (1875) 24 W.R. 26, is a decision against the respondent's contention. Section 14 of Act XV of 1877 proceeded on the basis that where a plaint was returned u/s 20 of Act

XIV of 1882 and presented again to another court, the suit must be regarded as a new one and not as a continuation of the former suit. We see no reason to differ from the decision in *Mira Mohidin Rowthen and Another Vs. Nallaperumal Pillai and Another*, . We allow the Second Appeal and dismiss the suit. We make no order as to costs.