

(1912) 02 MAD CK 0028
In the Madras High Court

Seshagiri Row

APPELLANT

Vs

Vajra Velayudan Pillai

RESPONDENT

Date of Decision : 28-02-1912

Acts Referred:

Citation : (1912) 22 MLJ 377

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 re-presented 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 as legally valid and capable of being continued in another court. In the case in Takhuroodeen Mahomed Eshan Chowdry v.

Kurim Bux Chowdry and Ors. (1865) 3 W.R.C.R. 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 Khellat Chunder Ghose v.

Nusseebunnissa Bibee and Ors. (1871) 16 W.R.C.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 re-presented to

another court. In *Assan v. Pathumma* ILR (1899) M. 494 this court held that the original suit must be taken to have been newly amended and the case is therefore not similar to this case. *Abboye Churn Chuckerbutty v. Gour Mohun Dutt and Anr.* (1875) 24 W.R.C.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.