

(1897) 09 MAD CK 0002
In the Madras High Court

Seshamma and Another

APPELLANT

Vs

Chennappa

RESPONDENT

Date of Decision : 10-09-1897

Acts Referred:

Citation : (1897) ILR (Mad) 467

Hon'ble Judges : Shephard, J; Davies, J

Bench : Division Bench

Judgement

1. We are not satisfied that this is a case in which the plaintiffs would be entitled to probate as executors by implication. The duties which the plaintiffs are directed to perform are not specifically the duties of an executor. It is not the administration of the estate which they are told to carry out. But rather it is as guardians of the child whose adoption is contemplated that they are intended to act. We think, it is quite clear, that there was no intention to vest any property in them. They were only directed to protect the property during the minority. For these reasons, we think that the suit is wrongly brought in the name of the plaintiffs as executors. But as the objection was not taken in the Court of First Instance, and was apparently taken by the Judge himself, we think the suit ought not to have been dismissed without giving the plaintiffs an opportunity to amend. We shall now allow the amendment which, we think, the Judge ought to have allowed and which, if it had been allowed, would have saved the suit from any danger of limitation. The amendment will take the form of substituting the minor son as plaintiff with one of the present plaintiffs as next friend.

2. The decree of the Judge must be reversed and the appeal remanded for

disposal on the merits. Costs will be provided for in the revised decree